

DOCUMENT RESUME

ED 439 833

PS 028 452

TITLE Making Reasonable Efforts: A Permanent Home for Every Child.
INSTITUTION Youth Law Center, San Francisco, CA.
SPONS AGENCY Edna McConnell Clark Foundation, New York, NY.
PUB DATE 2000-00-00
NOTE 83p.
AVAILABLE FROM Program for Children, Edna McConnell Clark Foundation, 250 Park Ave., New York, NY 10177-0026. Tel: 212-551-9100; Web site: <http://fdncenter.org/grantmaker/emclark/index.html>.
PUB TYPE Guides - Non-Classroom (055)
EDRS PRICE MF01/PC04 Plus Postage.
DESCRIPTORS Adoption; Child Abuse; Child Neglect; *Child Welfare; *Compliance (Legal); *Federal Legislation; *Foster Care; Foster Children; Safety
IDENTIFIERS *Adoption and Safe Families Act 1997; Adoption Assistance and Child Welfare Act 1980; Child Protective Services; Family Preservation Services; *Permanency Planning (Foster Care)

ABSTRACT

In 1980, Congress passed the Adoption Assistance and Child Welfare Act. The Act requires, in part, that states receiving federal monies under the Act make "reasonable efforts" to prevent the removal of children from their homes and, whenever possible, to reunify children placed in foster care with their families. In 1997, Congress passed the Adoption and Safe Families Act, which modifies the reasonable efforts requirement by allowing exceptions in certain situations and by using the same term, "reasonable efforts," to describe a new child welfare agency requirement to find permanent homes for children. Asserting that "reasonable efforts" has been one of the most hotly debated and confusing issues in the field of child welfare over the past 2 decades, this handbook details both the old and the new reasonable efforts requirements, and outlines the specific actions that should be taken by attorneys, judges, and child welfare agencies to ensure that the letter and spirit of the laws are met. The handbook also includes lists of organizational and Internet resources. (Contains 91 references and resources, including organizations, internet sites, and publications.) (EV)

ED 439 833

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION
CENTER (ERIC)

☒ This document has been reproduced as
received from the person or organization
originating it.

☐ Minor changes have been made to
improve reproduction quality.

• Points of view or opinions stated in this
document do not necessarily represent
official OERI position or policy.

MAKING REASONABLE EFFORTS:

A Permanent Home for Every Child

PERMISSION TO REPRODUCE AND
DISSEMINATE THIS MATERIAL HAS
BEEN GRANTED BY

Mamie B. Yee

TO THE EDUCATIONAL RESOURCES
INFORMATION CENTER (ERIC)

BEST COPY AVAILABLE

MAKING REASONABLE EFFORTS:

A Permanent Home
for Every Child

DEVELOPED WITH SUPPORT FROM THE
EDNA MCCONNELL CLARK FOUNDATION

Copyright © 2000 Youth Law Center
All rights reserved.

Photography: Marlene Desautels and Ralph Granich
Design: i4 Design/Sausalito, CA

TABLE OF CONTENTS

INTRODUCTION	1
SUMMARY OF GUIDELINES FOR ATTORNEYS	7
GUIDELINES FOR ATTORNEYS	11
Responsibilities of All Attorneys	11
1. <i>Responsibilities Prior to Representing a Client in a Dependency Case</i>	11
2. <i>Responsibilities After Undertaking Representation of a Client in a Dependency Case</i>	14
Additional Responsibilities of Attorneys for Parents or Children	19
Additional Responsibilities of Agency Attorneys	23
SUMMARY OF GUIDELINES FOR JUDGES	31
GUIDELINES FOR JUDGES	34
Monitoring Social and Legal Services to Children and Families	34
Making Reasonable Efforts Determinations	38
SUMMARY OF GUIDELINES FOR CHILD WELFARE AGENCIES	49
GUIDELINES FOR CHILD WELFARE AGENCIES	54
Establishing Programs of Preventive, Reunification, and Permanency Services	54
Making Reasonable Efforts in Each Case	65
RESOURCE ORGANIZATIONS	71
INTERNET RESOURCES	72
REFERENCE LIST	75

INTRODUCTION

In 1980, Congress passed the Adoption Assistance and Child Welfare Act.¹ The Adoption Assistance Act requires, in part, that states receiving federal monies under the Act make "reasonable efforts" to prevent the removal of children from their homes and, whenever possible, to reunify children placed in foster care with their families.

In 1997, Congress passed the Adoption and Safe Families Act (ASFA),² which modifies the reasonable efforts requirement by allowing exceptions to the requirement in certain situations and by using the same term — reasonable efforts — to describe a new child welfare agency requirement to find permanent homes for children.

"Reasonable efforts" has been one of the most hotly debated and confusing issues in the field of child welfare over the past two decades. This handbook explains what reasonable efforts are as we move out of the 1990s. It describes both the old and the new reasonable efforts requirements in detail, and outlines specific actions that should be taken by attorneys, judges, and child welfare agencies to ensure that the letter and spirit of the laws are met.

The Adoption Assistance Act contains no detailed definition of "reasonable efforts." The Act makes clear, however, that reasonable efforts to prevent placement or to reunify a family must be made *in each case*, for every child receiving federally funded foster care maintenance payments under Title IV-E of the Social Security Act.³ The federal regulations implementing the Act also require that mandatory case plans for each child in federally funded or state-supervised⁴ foster care specify the services that have been provided to prevent placement or facilitate reunification.⁵

Establishing the required services programs and making the appropriate reasonable efforts in each case are the responsibilities of the state child welfare agency designated as the "single state agency" pursuant to the Adoption Assistance Act.⁶ Most states have enacted statutes implementing the federal requirements or similarly mandating reasonable efforts to prevent foster care placements.

ASFA retains the 1980 reasonable efforts language, but amends it to clarify that a child's safety is paramount and provides exceptions to the reasonable efforts requirement. Reasonable efforts are not required if a court determines that one of the three exceptions exist. These are:

- if the parent has subjected the child to "aggravated circumstances," as defined by each state;⁷
- if the parent has committed murder⁸ or voluntary manslaughter of another of their children, or felony assault⁹ that results in serious bodily harm of any of their children; or
- if the parent's rights to a sibling of the child have been terminated.¹⁰

ASFA adds two other requirements to the reasonable efforts provisions. First, reasonable efforts must be made to find permanent homes for children for whom reunification is not the permanent plan, including children for whom reunification services have been terminated and children for whom reunification was never ordered in the first place.¹¹ Second, ASFA allows concurrent planning, in which family reunification and adoption planning are pursued at the same time.¹² The child's case plan must document the specific recruitment efforts and other steps the agency has taken to achieve permanence for the child.¹³

In developing working definitions of "reasonable efforts," each state agency should bear in mind the underlying purpose of the requirements of the Adoption Assistance Act and ASFA. These laws are intended to ensure that:

- no child is placed in foster care who can be protected in his or her own home;
- when removal is necessary, reunification always be attempted unless the juvenile court has determined that no reunification efforts need be made; and
- children who are unable to return to their families are placed in adoptive homes or with legal guardians so that they do not languish in foster care.

The principle of maintaining families and avoiding separation is clearly expressed in child welfare standards and literature. Services to maintain children in their own homes have been called "the first line of defense" in child welfare. The goal of maintaining families has been the central espoused goal in child welfare. This goal is grounded in the belief that the best place for children is in their own homes cared for by their own parents. It is also consistent with the constitutional right of family integrity, recognized consistently by the U.S. Supreme Court and other federal and state courts. This right allows parents to raise their children free of state intervention, unless a compelling reason — associated with the safety or welfare of the child — justifies intervention.¹⁴

At the same time, however, some in the child welfare community (and in Congress) had come to believe that the reasonable efforts requirement as written in the Adoption Assistance Act meant that child welfare agencies returned children to unsafe homes, and this sentiment was one of the factors that led to the new reasonable efforts requirements of ASFA. States now have a duty to ensure that children do not languish in foster care when reunification efforts either fail or are not ordered in the first place. To achieve this goal as expeditiously as possible, ASFA allows exceptions to the original reasonable efforts requirement, and creates a new definition of the requirement, specifically allowing child welfare agencies to make reasonable efforts to place a child for adoption or with a legal guardian at the same time as they make efforts to reunify families.¹⁵

While the old and new definitions of "reasonable efforts" refer to potentially conflicting actions, the consequences for states are clear. Each state should establish programs of preventive and reunification services sufficiently

comprehensive and flexible to enable the state to respond to children at imminent risk of removal from their homes — by determining whether services would enable children to remain safely at home, and, if so, by providing those services. At the same time, states should establish programs aimed at facilitating adoptions or legal guardianships for those children who cannot return home.

This publication updates an earlier work written collaboratively by the National Council of Juvenile and Family Court Judges, the Child Welfare League of America, the Youth Law Center, and the National Center for Youth Law with support from the Edna McConnell Clark Foundation. The original publication, entitled "*Making Reasonable Efforts: Steps for Keeping Families Together*," described the reasonable efforts requirement of the Adoption Assistance Act. It provided guidelines for attorneys, judges, and social services personnel to assist them in defining, providing, and enforcing reasonable efforts to enable children to remain safely at home or to rejoin their families if possible. The authors of the original publication were Carole Shauffer and Alice Shotton of the Youth Law Center; Abigail English and Alice Bussiere of the National Center for Youth Law; Robert Praksti of the National Council of Juvenile and Family Court Judges, and Betsy Cole of the Child Welfare League of America.

This updated handbook incorporates many of the guidelines in the original publication with minor changes, and provides new guidelines that correspond to the changes in federal law. Most of these changes reflect the emphasis on protecting children's safety and finding permanent homes for all children, including those who cannot safely return to their families of origin. The primary author of the updated publication is Alice Shotton with assistance from Shannan Wilber and Mamie Yee at the Youth Law Center. Thanks go to Eleanor Bush at the Juvenile Law Center; and Christine Bailey and Mary Mentaberry at the National Council of Juvenile and Family Court Judges for their valuable input. We also appreciate the continued support of the Edna McConnell Clark Foundation and their dedication to improving the lives of children and their families.

The handbook has three parts: Guidelines for Attorneys, Guidelines for Judges, and Guidelines for Child Welfare Agencies. In each section, the guidelines are indicated in bold type. Discussion of the principles follows each guideline. In order to make effective use of these guidelines and commentary, readers should be familiar not only with their own section, but also with the Guidelines for other parties. We urge attorneys, judges, and agency personnel to implement these guidelines in an effort to ensure that every child has a stable, caring, and supportive family for life.

ENDNOTES

1. Public Law (P.L.) 96-272 (enacted June 17, 1980) repealed the old foster care provisions of Title IV-A of the Social Security Act, added a new Title IV-E (Foster Care and Adoption Assistance), and amended Title IV-B (Child Welfare Services) of the Social Security Act. 42 U.S.C. Sections 620 *et seq.* and Sections 670 *et seq.*
2. Public Law 105-89; 42 U.S.C. Sections 671(a)(15) and 675 (5)(C)(E).
3. 42 U.S.C. Section 671(a)(15).
4. Case plan requirements apply to more than just Title IV-E eligible children. Children in state-supervised foster care who are not IV-E eligible are also included.
5. 45 C.F.R. Section 1356.21(d)(4).
6. 42 U.S.C. Section 671(a)(2).
7. In defining such circumstances, Congress suggested states include the following: torture, abandonment, chronic abuse, and sexual abuse. 42 U.S.C. Section 671 (a)(15)(D)(i).
8. The exceptions also include aiding, abetting, attempting, conspiring, or soliciting the crime of murder or voluntary manslaughter. 42 U.S.C. Section 671(a)(15)(D)(ii)(III).
9. The felony assault must cause "serious bodily injury." 42 U.S.C. Section 671(a)(15)(D)(ii)(IV).
10. 42 U.S.C. Sections 671(a)(15)(A) and (D).
11. 42 U.S.C. Sections 671(a)(15)(C) and (E).
12. 42 U.S.C. Section 671(a)(15)(F).
13. 42 U.S.C. Section 675(1)(E).
14. See, e.g., *Santosky v. Kramer*, 455 U.S. 745 (1982); *Stanley v. Illinois*, 405 U.S. 645 (1972).
15. At least one state, California, has passed legislation clarifying that providing services to achieve legal permanence for a child concurrently with reunification services cannot be deemed a failure to provide reasonable services. California Welfare and Institutions Code Sections 366.21(e)(3), (f)(3) and (g)(3)(C) and 366.22(a)(3).

GUIDELINES FOR ATTORNEYS

BEST COPY AVAILABLE

SUMMARY OF GUIDELINES FOR ATTORNEYS

RESPONSIBILITIES OF ALL ATTORNEYS

1. Responsibilities Prior to Representing a Client in a Dependency Case

Prior to any involvement in a dependency case, all attorneys should be familiar with the following:

- a. The causes of and available treatment for child abuse and neglect.
- b. Child development principles, particularly the importance of attachment and bonding and the effects of parental separation on young children.
- c. The child welfare and family preservation services available in the community and the problems the services are designed to address. Absent specific documentation as to why they are not needed, at least the following services should be available:
 1. family preservation services;
 2. generic family-based services;
 3. cash payments for emergency needs/ongoing financial support;
 4. services to meet basic needs such as food, clothing, and housing;
 5. services to address specific problems:
 - respite care
 - child care
 - evaluation and treatment for substance abuse/chemical addiction
 - parenting training
 - life skills training/household management; and
 6. facilitative services such as visitation and transportation.
- d. The structure and function of the child welfare agency and court systems, services for which the agency will routinely pay, and services for which the agency either cannot or will not pay.
- e. Experts who can consult with attorneys and/or testify on the reasonableness of agency efforts to maintain the child in the home.

2. Responsibilities After Undertaking Representation of a Client in a Dependency Case

After accepting a case, an attorney should:

- a. Interview the client.
Interview the client to determine what involvement, if any, the agency had with the parent or child prior to child's removal from the home, and what services the client believes would have been helpful in avoiding the placement.
- b. Investigate the child's removal from the home.
Become familiar with the circumstances under which the child was taken from the

parent's custody. Attorneys should know the history of the family's prior contacts with the agency, who made the decision to remove the child, and the basis for removal, including:

1. the specific behavior or circumstances that put the child at risk of harm and justified removal;
2. how family problems are causing or contributing to the risk; and
3. services the agency has provided and will provide for the family to alleviate or diminish the risk and what alternatives, including in-home services and placement with relatives, were considered prior to removal.

c. Investigate reunification efforts.

If the child has been removed from the home, determine what contacts the agency has had with the parents and the child since the removal, and what efforts it has made to reunify the family.

d. Investigate efforts to achieve permanency for children.

Attorneys for both agencies and children should ensure that agencies make reasonable efforts to timely place children in permanent placements, including:

1. ensuring permanency hearings are timely held;
2. identifying appropriate cases for concurrent planning;
3. timely filing petitions to terminate parental rights; and
4. making specific recruitment efforts to find adoptive homes for children, including timely adoption studies of both the child and potential adoptive family, and the prompt pursuit of adoption assistance funds for special needs children.

e. Investigate involvement of outside agencies.

Determine whether other agencies have been involved in the case and interview representatives of these agencies.

f. Interview the agency social worker and review the agency's file.

Make arrangements with the agency attorney to talk directly with the social worker involved in the case and review the agency's file to ensure it has complied with its own procedures and regulations.

ADDITIONAL RESPONSIBILITIES OF ATTORNEYS FOR PARENTS OR CHILDREN

1. Determine the Client's Goals and Concerns About Placement

Explain to the client the possible results of the shelter care hearing and the psychological and legal consequences of removing the child from the home, and elicit the client's view of the placement and ultimate goals at the hearing.

2. Interview the Agency Social Worker

Communicate with the agency social worker and review agency records to obtain more information about the case, including services provided or requested by the family prior to the child's removal and the social worker's plan for reunification (services to be provided, visitation arrangements, and projected date of child's return).

3. Determine the Child's Ability to Return Home

By asking the client and consulting with experts, determine what services should be provided to allow the child to return home. Determine whether these services are available in the community and can be provided by the agency.

4. Require the Agency to Present Evidence of Reasonable Efforts

Require the agency to present evidence on the record of all efforts made or attempted to keep the child in the home.

5. Ensure that Witnesses Attend the Hearing

Ensure that individuals are subpoenaed and attend the hearing who have had contact with the family and can testify either to the efforts the agency made to keep child in the home, or the services that should have been provided but were not.

6. Present Evidence on Reasonable Efforts

Present evidence on the reasonableness or unreasonableness of the agency's efforts, and on alternative efforts that could have been made.

7. Obtain Court Orders for Specific Services

Where possible, request that the court order that specific services, including visitation, be provided.

8. Ensure that Settlement of the Case Is Incorporated in the Case Plan

ADDITIONAL RESPONSIBILITIES OF AGENCY ATTORNEYS

1. Protect the Child's Interests

Ensure that the agency complies with the Guidelines for Agencies as outlined in this document and, as a regular practice, makes reasonable efforts to keep children in their homes, returns them to their homes as soon as possible, and follows timely procedures to achieve permanency for them.

2. Meet the Obligation to Prove the Case

Accept the obligation to prove that the agency made reasonable efforts, by presenting evidence of efforts made to keep the child in the home, that these efforts were reasonable, and that additional efforts would not have prevented removal.

3. Represent only the Agency, Not the Child

Take direction from and represent only the agency and refuse to represent the child, on the grounds that such dual representation is a conflict of interest.

4. Interview the Agency Social Worker

Talk with the worker assigned to the case and review agency records for:

- a. Information about the case;
- b. The services provided or requested by the family prior to the child's removal;
- c. The plans for reunification, including services to be provided, arrangements for visits, and the projected date of the child's return home; and
- d. In appropriate cases, information about timely procedures to achieve a permanent placement for the child.

5. Provide Agency Records to Attorneys for Other Parties

Make agency records available to attorneys for other parties to the fullest extent possible.

6. Ensure that Witnesses Attend the Hearing

Ensure that individuals are subpoenaed and attend the hearing who have had contact with the family and can testify to the efforts the agency made to keep the child in the home.

7. Inform the Court About Available Community Services

Inform the court about services available in the community or services required by the state social services plan, whether or not they were used in the particular case. If not used, explain why using these services was not feasible. Also inform the court about services not available in the community that could remedy the family's problems and the agency's efforts to obtain these services.

GUIDELINES FOR ATTORNEYS

Even with the 1997 ASFA changes, the reasonable efforts requirement gives attorneys for children and parents a strong tool for enforcing their clients' rights to services and to family integrity. It offers agency attorneys a guide by which to determine if the agency is fulfilling its responsibilities, and a tool to assure that frivolous cases are not brought to the juvenile court.

ASFA also gives agency attorneys a pivotal role in bringing to the court's attention those cases in which reasonable efforts need not be made or should be terminated. The agency and children's attorneys also must focus on the question of whether the case requires the agency to concurrently provide reasonable efforts to reunify a family and to place a child for adoption or with a legal guardian.

This section is written primarily for attorneys in dependency proceedings.¹ Courts may also use lay investigators and advocates, like Court Appointed Special Advocates (CASA) or guardian *ad litem* (GAL) programs to investigate cases, develop a plan, and/or represent the child's best interests. CASAs and GALs should be aware of these guidelines and use them to serve the child's best interests. Training materials for CASA and GAL programs are available from the National Council of Juvenile and Family Court Judges and from the National CASA Association.

This handbook outlines guidelines for attorneys to use in presenting a case on reasonable efforts to the juvenile court. *These guidelines do not represent an exhaustive discussion of adequate representation of clients in dependency proceedings.* They focus only on reasonable efforts to prevent removal of a child from his or her family, to permit reunification of a child with his or her family, and to find a permanent home for every child.

Attorneys may want to consult national resource centers for advice on how to proceed in litigation of this nature. Among groups that may be able to provide assistance are the Youth Law Center, the National Center for Youth Law, the Children's Defense Fund, the ABA Center on Children and the Law, and the National Council of Juvenile and Family Court Judges. Addresses and telephone numbers for these organizations are found in the resource list following the guidelines.

RESPONSIBILITIES OF ALL ATTORNEYS

1. Responsibilities Prior to Representing a Client in a Dependency Case

Representing clients in dependency cases requires expertise not usually acquired in the general practice of law. Because of the short time periods between the initial detention of a child and the shelter care hearing,² and between the shelter care hearing and adjudication, attorneys cannot gain the expertise necessary to adequately represent clients *after* accepting a case.

Therefore, *prior* to accepting a dependency case, attorneys must have sufficient background information to practice competently in the area.

Prior to any involvement in a dependency case, all attorneys should be familiar with the following:

- a. The causes of and available treatment for child abuse and neglect.
- b. Child development principles, particularly the importance of attachment and bonding and the effects of parental separation on young children.
- c. The child welfare and family preservation services available in the community and the problems the services are designed to address. Absent specific documentation as to why they are not needed, at least the following services should be available:
 1. family preservation services;
 2. generic family-based services;
 3. cash payments for emergency needs/ongoing financial support;
 4. services to meet basic needs such as food, clothing, and housing;
 5. services to address specific problems:
 - respite care
 - child care
 - evaluation and treatment for substance abuse/chemical addiction
 - parenting training
 - life skills training/household management; and
 6. facilitative services such as visitation and transportation.

Learning about services available in the community is an ongoing process, and few attorneys or social workers are aware of every service that exists. At minimum, attorneys should be familiar with the major service providers and those services that address the most common problems faced by families who need help caring for their children. (These services are more fully described in the Guidelines for Agencies.) Attorneys should also be aware of needed services not routinely available in their community and should know how to obtain them. Finally, attorneys should be familiar with the potential range of services. Too frequently, attorneys think of services in terms of traditional programs like counseling or parenting training. In particular, programs of intensive home-based services are available in many parts of the country. Some agencies also provide direct benefits, like housing, utilities payments, and income maintenance, which, although not considered traditional child welfare services, can be extremely effective in resolving a client's problem.

- d. The structure and function of the child welfare agency and court systems, services for which the agency will routinely pay, and services for which the agency either cannot or will not pay.

Every state is required by the Adoption Assistance and Child Welfare Act to provide the federal government with a list of services available to prevent the removal of children from their homes.³ This list is a public document and every attorney practicing in this field should have a copy. In addition, local child welfare agencies may provide or pay for services not listed in the plan. These services should be described in the agency's child welfare manual or regulations, which may also prohibit an agency from paying for certain services. Attorneys should obtain copies of local regulations and manuals as well as those from the state.

e. Experts who can consult with attorneys and/or testify on the reasonableness of agency efforts to maintain the child in the home.

Professionals in social service agencies and schools of social work, psychology, criminal justice and child development at local colleges and universities, are potential sources for expert consultation on solutions to clients' problems. Some experts may be willing to testify or submit reports to the court. Ideally, attorneys should develop a relationship with at least one expert in child



welfare who can help obtain additional expert advice when necessary. When representing children covered by the Indian Child Welfare Act, contact with experts on tribal child rearing practices is essential. Attorneys may also find professional social welfare literature helpful in understanding the appropriate use of preventive and reunification services, and services to achieve permanence for children in foster care.

2. Responsibilities After Undertaking Representation of a Client in a Dependency Case

After accepting a case, an attorney should:

a. Interview the client.

Interview the client to determine what involvement, if any, the agency had with the parent or child prior to child's removal from the home, and what services the client believes would have been helpful in avoiding the placement.

The client interview should not be the sole basis for determining what efforts have been made to reunify a family. Agency records should also reflect any services that were provided and attorneys must review the records. However, it is critical for the attorney to obtain the client's perspective on agency contacts and services provided. A client's perception may differ from the social worker's. Agency records may be inaccurate or reflect services that were only considered rather than those actually offered to the client. The client interview is also important in determining whether available services were clearly and adequately explained to the client. Frequently, parents see themselves as passive recipients of services rather than as a part of the process of determining what services are necessary to resolve the problem. Attorneys can assist them in taking a more active role in the process and representing their own views. Attorneys should help clients obtain not only services deemed necessary by experts, but also those that the family considers essential to its survival.

Many child welfare agencies designate particular workers who do not have direct involvement with the cases to appear in juvenile court. These workers are familiar with a case only through the social worker's notes. An attorney cannot adequately represent the agency or act in the child's best interests without interviewing the worker who has direct responsibility for the family. Thus, attorneys should seek out the worker actually involved with the case to determine what efforts have been made, and whether additional efforts were possible, to avoid the trauma to the child of removal and the expense to the agency of foster care.

b. Investigate the child's removal from the home.

Become familiar with the circumstances under which the child was taken from the parent's custody. Attorneys should know the history of the family's prior contacts

with the agency, who made the decision to remove the child, and the basis for removal, including:

1. the specific behavior or circumstances that put the child at risk of harm and justified removal;
2. how family problems are causing or contributing to the risk; and
3. services the agency has provided and will provide for the family to alleviate or diminish the risk and what alternatives, including in-home services and placement with relatives, were considered prior to removal.

The circumstances surrounding removal vary from case to case. In some, the child's removal occurs during the family's initial contact with the agency; in others, the family has a long history of agency contacts, and removal is the agency's last resort in its efforts to protect the child. Agency practice also varies from jurisdiction to jurisdiction and from case to case. In some jurisdictions, agency social workers participate both in the decision to remove and in the actual removal. In others, law enforcement is authorized to remove a child from home without consulting the agency. In these cases, the agency may be notified only after a child is taken to shelter care.

If law enforcement alone makes the decision to remove a child, no efforts will be made to avoid placement. Most law enforcement agencies do not have the resources and/or training to make these efforts. It is better practice for law enforcement to investigate jointly with the child welfare agency so removal does not occur without the agency's advice and approval. If the agency was not involved, the attorney must determine whether any services could have been used to maintain the child in the home. If, on the other hand, the child welfare agency has been involved and offered some services, the attorney must determine whether those services were adequate and appropriate. In some cases, immediate removal from the home is necessary because law enforcement is unable to contact the child welfare agency, or because of the emergency nature of the situation. In that case, the attorney should review the case to determine whether reasonable efforts were made to reunify the child after the emergency removal but prior to the shelter care hearing.

Attorneys must be aware of prior contacts between the agency and the family. These can be identified by conversations with the family (if the attorney represents a family member) or the social worker, and a review of agency records. If there has been extensive prior involvement, a written case plan in the record should reflect the reason for the decision to remove the child. All parties and their attorneys are entitled to a copy of the case plan. The attorney should review the case plan to make sure the family was informed that removal would be a consequence of failure to cooperate with the case plan.

c. Investigate reunification efforts.

If the child has been removed from the home, determine what contacts the agency has had with the parents and the child since the removal, and what efforts it has made to reunify the family.

An attorney is frequently assigned to a case on the day of the shelter care hearing. Depending on state law, local practice, and the court's schedule, this hearing may occur anywhere from one to five days after the child has been removed. During this initial period, the agency should have made efforts to reunify the family.

Examples of reunification services are provided above and in the Guidelines for Agencies. They usually include, at a minimum, visitation and communication between the child and the parent. They may also include efforts to find an alternative living arrangement to foster care, including the home of a relative or neighbor. Reunification services should also include emergency services — such as homemaker services, child or respite care, and family counseling — that enable families to keep the child at home, where appropriate. The attorney should determine which, if any, of these services has been offered and review the relevant guidelines to determine whether the agency is in compliance with the reasonable efforts requirement.

The attorney for the parent or child should be prepared to bring to the court's attention the failure to provide reasonable services and to request a court order that the services be provided. Agency attorneys should urge the agency to provide these services both in the individual case and on a wider basis.

d. Investigate efforts to achieve permanency for children.

Attorneys for both agencies and children should ensure that agencies make reasonable efforts to timely place children in permanent placements, including:

1. ensuring permanency hearings are timely held;
2. identifying appropriate cases for concurrent planning;
3. timely filing petitions to terminate parental rights; and
4. making specific recruitment efforts to find adoptive homes for children, including timely adoption studies of both the child and potential adoptive family, and the prompt pursuit of adoption assistance funds for special needs children.

ASFA requires the court to hold a permanency hearing if a child has been in foster care for 12 months,⁴ or within 30 days after it determines that reasonable efforts to reunify are not required.⁵ At the permanency hearing, the court must determine whether a child will be returned home and if so, when; placed for adoption, with the state filing a petition to terminate parental rights; referred for legal guardianship; or placed in "another planned

permanent living arrangement." Courts must also ensure that agencies make reasonable efforts to place a child in a timely manner in accordance with the child's permanency plan.⁶

As part of these reasonable efforts, the agency or children's attorney should play a role in focusing the agency on those cases that should be selected for concurrent planning. While concurrent planning is new to some agencies, in others it has been agency practice for many years. Principles of concurrent planning include:

- advising parents from the beginning of a case about the possibility of their rights to their children being permanently terminated if they fail to comply with their case plan;
- placing siblings in the same foster home at the time of initial placement;
- increasing recruitment of foster/adoptive parents;
- training foster parents to act as mentors for the parents and encouraging a relationship between them;
- placing children on adoption exchanges sooner than has been the agency's practice; and



- documenting steps to locate permanent homes for the child. These steps should include ensuring necessary reports are done in a timely manner. These reports might include a child's adoption evaluation, home studies of potential adoptive parents, and assessment of a child's qualification for adoption subsidies.

ASFA also requires an agency to file a petition to terminate parental rights when a child of any age has been in the care of the state for 15 months out of the most recent 22 months.⁷ These months are counted from the date of the first judicial finding of abuse or neglect or 60 days after the child's removal from the home, whichever is earlier, *even if there is no adjudication*.⁸ Lengthy continuances may not be in the clients' interests. A termination petition must also be filed when a court determines that a child has been abandoned, or that the parent has committed murder or voluntary manslaughter of another of their children, or a felony assault resulting in serious bodily injury of any of the parent's children.⁹

The legislation sets out three exceptions to the filing of these termination petitions. These include when the child is in a relative's care; if the child's case plan contains a compelling reason why filing the petition is not in the child's best interests; and if the agency has not provided the child's family the services deemed necessary to return the child safely home.¹⁰

e. Investigate involvement of outside agencies.

Determine whether other agencies have been involved in the case and interview representatives of these agencies.

Attorneys often erroneously assume the public child welfare agency is the only agency involved with the family. Unfortunately, the agency may make the same assumption. In many cases, a family has been involved with other public and/or private social service agencies, either through referral from the public agency or on its own initiative. The attorney should find out which other agencies are involved with the family, the reason for their involvement, and the nature of that involvement. The attorney should interview representatives of agencies who have worked with the family. When the attorney represents a parent, he or she can obtain a release of confidential information from the parent in order to interview agency representatives. Attorneys representing children are often entitled to receive this information by virtue of their court appointment. The testimony of these agency representatives may assist the court in making reasonable efforts determinations. At a minimum, an attorney should attempt to obtain their reports and, if they are favorable, to introduce them as evidence that reasonable efforts were or were not made.

- f. Interview the agency social worker and review the agency's file.

Make arrangements with the agency attorney to talk directly with the social worker involved in the case and review the agency's file to ensure it has complied with its own procedures and regulations.

Because the agency has the burden to show the court that it has made reasonable efforts, it should maintain adequate records to demonstrate its compliance with both its own regulations and accepted social work standards. All attorneys should review the agency's records prior to the hearing to determine whether the agency has specifically identified the client's problem and made efforts to provide services to alleviate that problem.

For more information on appropriate agency record keeping, see Guidelines for Agencies and the Child Welfare League's standards for child welfare services.

ADDITIONAL RESPONSIBILITIES OF ATTORNEYS FOR PARENTS OR CHILDREN

In addition to the responsibilities for all attorneys in dependency proceedings, attorneys for parents or children have additional responsibilities related to the particular vulnerabilities of their clients. These special responsibilities are outlined below, and supplement, but do not replace, the general responsibilities of all attorneys.

Representing children poses special challenges. Some children are too young to express a position to their attorney. Others have strong opinions about being placed in foster care. There is some disagreement over the role of the child's attorney in judicial proceedings when the child is old enough to express an opinion. One position is that the attorney should advocate for the child's best interests, regardless of what the child says. The other is that the attorney should represent the child as one would represent any other client and advocate for the position the child expresses.

These guidelines do not adopt either position. In many jurisdictions, both a guardian ad litem and an attorney are appointed in the same dependency case. A guardian ad litem is responsible for acting in the child's best interests. This frees the attorney to represent the child's position. In either case, the attorney should explain clearly to the child what is at stake in the proceedings, help the child understand the proceedings, and make an effort to determine what the child wants. The attorney should then consider all relevant factors, including the child's best interests, when formulating a position.

Attorneys for children also should be aware of the differences between a child's and an adult's perception of time. Matters must progress quickly in juvenile court for them to be meaningful for children. For very young children, a matter of

a few days or weeks is an extended period. A matter of months or years can be the equivalent of half a lifetime. The attorney must, therefore, attempt to achieve a quick resolution.

Thus, in addition to carrying out the general responsibilities of attorneys listed above, attorneys for parents or children should:

1. Determine the Client's Goals and Concerns About Placement

Explain to the client the possible results of the shelter care hearing and the psychological and legal consequences of removing the child from the home, and elicit the client's view of the placement and ultimate goals at the hearing.

An attorney should not assume that the parent or child wants immediate, unconditional reunification. The attorney should begin the interview with the client in a nondirective way, permitting the client to express an honest opinion on the appropriateness of reunification. The attorney should also inform the client about services that may make reunification possible. These services include not only traditional services, but also financial assistance. A client who is not aware of available services may wrongly conclude reunification is impossible.

At the same time, the client must be aware of the very short time frames for reunification that may exist in the client's jurisdiction. While ASFA decreases the reunification period from 18 months to only 12 months, some states have decreased it even further. For example, in California, parents of children under age three on the date of initial removal receive only six months of family reunification services.¹¹

The attorney should fully explain the reasonable efforts requirement and determine which services the client believes are necessary, prior to taking a position on the client's behalf. The attorney must explain to the client the consequences of removing a child at a shelter care hearing. The client should know the removal in itself may be harmful to the child and that what starts as a temporary removal may become permanent.

2. Interview the Agency Social Worker

Communicate with the agency social worker and review agency records to obtain more information about the case, including services provided or requested by the family prior to the child's removal and the social worker's plan for reunification (services to be provided, visitation arrangements, and projected date of child's return).

3. Determine the Child's Ability to Return Home

By asking the client and consulting with experts, determine what services should be provided to allow the child to return home. Determine whether these services are available in the community and can be provided by the agency.

The family is often best able to explain the problems that must be addressed by services. However, the family may lack sophistication about the kinds of services or arrangements available to permit a child to stay at home. An attorney should consult with social welfare experts about services that would permit reunification while guaranteeing the child's safety.

4. Require the Agency to Present Evidence of Reasonable Efforts

Require the agency to present evidence on the record of all efforts made or attempted to keep the child in the home.

The agency must prove that efforts were made. An attorney who is challenging the detention decision should require the submission of direct evidence of reasonable efforts.

5. Ensure that Witnesses Attend the Hearing

Ensure that individuals are subpoenaed and attend the hearing who have had contact with the family and can testify either to the efforts the agency made to keep the child in the home, or the services that should have been provided but were not.



This may require the attorney to request a brief continuance of the hearing, particularly if the attorney is appointed on the day of the hearing. In most cases, all the information presented at a shelter care hearing is in the agency's control. Without outside information, the attorney must rely on the accuracy of both the facts and conclusions contained in the agency's reports. In many cases, family and community perceptions of the agency's actions vary from the agency's.

The attorney must provide the court with a basis for finding that reasonable efforts have not been made. The brief delay in time, discussed more fully under Guidelines for Judges, may result in a slightly extended detention, but may enable the attorney to present a case that will ultimately gain the child's release.

6. Present Evidence on Reasonable Efforts

Present evidence on the reasonableness or unreasonableness of the agency's efforts, and on alternative efforts that could have been made.

Evidence may consist of expert testimony, a demonstration of the agency's failure to follow the Guidelines for Agencies, or citations from social work literature and case law demonstrating that other means short of removal exist for remedying a family's problem. In most cases, clients in dependency proceedings are either indigent or lack sufficient funds to pay for appearances by experts. The attorney should ask the court to pay for the use of experts. The attorney should also consider subpoenaing agency administrators to determine whether the agency's regulations and plan for provision of services are reasonable and sufficient. In many situations, the social worker will admit that a service would be helpful, but claim that agency regulations do not allow the service to be provided. The attorney should not hesitate to call the director of the agency to testify on the reason for these regulations.

7. Obtain Court Orders for Specific Services

Where possible, request that the court order that specific services, including visitation, be provided.

The reasonable efforts provision of the federal law requires a court to order that reasonable efforts be made to reunify a family. However, in some jurisdictions, a court has no authority to order specific services. In those jurisdictions, the attorney should ask the court to make a general order that the agency make reasonable efforts to reunify the family.

In jurisdictions where a court can order specific services, the attorney should ask the court to order those services that the client has requested and that experts have agreed are appropriate. Particularly in those jurisdictions

where the court order serves as the basis for the case plan, the court should specifically list those services.

The attorney should make sure that the court-ordered plan is not so specific as to eliminate flexibility. For example, if visitation is ordered for a specific day of the week and the client is unable to visit on that day, the agency should be able to reschedule visitation. On the other hand, the agency should not be able arbitrarily to change the basic terms and conditions of the visitation plan.

Visitation is one of the most essential reunification services. Attorneys for the parents or child should request a specific minimal visitation order if the court has jurisdiction to issue such an order. The visitation order should set out the conditions, location, and frequency of visitation. This provides both parent and child with a guarantee of continued contact and an understanding of their responsibilities in maintaining that contact. Visits should also be used to involve parent in activities such as a child's medical appointments, meetings with a child's teachers, or family therapy. For young children, whenever possible, visits should provide parents the opportunity for hands-on care of the child such as feeding, bathing, or putting the child to bed.

8. Ensure that Settlement of the Case Is Incorporated in the Case Plan

In many cases, shelter care or dispositional hearings are resolved by negotiation either directly between the family and agency or between the parties and their attorneys. Such resolution should be specifically set out in the court order. If a family has agreed to the child's continued placement, provided that certain services are available, these services should be specifically listed in the court order. In all cases, the order should specify who is responsible for attaining services and by what time.

Specificity in the order is important because a new social worker may be assigned after the shelter care hearing. In many agencies, one worker is assigned to the case before placement and another after placement. Public agencies also undergo personnel shifts and reorganizations that alter workers' assignments. The court order binds the agency to providing the services on which the initial placement was conditioned.

ADDITIONAL RESPONSIBILITIES OF AGENCY ATTORNEYS

The agency attorney's ethical obligations include a responsibility to the general public and to the welfare of the child whom the agency is attempting to assist. This duty is particularly clear when the attorney is an employee of the district attorney's or county counsel's office. The attorney should help the social worker focus on the best interests of the child and comply with federal law requiring not

only that out-of-home placement be a last resort, but also that a child's health and safety be the paramount concern whether the child is in his own home or in foster care.¹²

In addition to carrying out the general responsibilities of attorneys listed above, attorneys representing a child welfare agency seeking to obtain custody of a child should:

1. Protect the Child's Interests

Ensure that the agency complies with the Guidelines for Agencies as outlined in this document and, as a regular practice, makes reasonable efforts to keep children in their homes, returns them to their homes as soon as possible, and follows timely procedures to achieve permanency for them.

Agency attorneys are responsible not only for representing the agency, but also for serving the ends of justice and protecting children. Therefore, attorneys should require the agency to comply with its responsibilities to its clients and the public and to provide adequate services to children in its care. Meeting the reasonable efforts requirement in practice is one of these responsibilities.

2. Meet the Obligation to Prove the Case

Accept the obligation to prove that the agency made reasonable efforts, by presenting evidence of efforts made to keep the child in the home, that these efforts were reasonable, and that additional efforts would not have prevented removal.

When the state seeks to remove a child from his or her home and to interfere with the constitutionally protected interests in family integrity, the agency attorney must show the necessity of the agency's actions. The agency attorney must present specific evidence that the agency attempted to provide the family with appropriate services designed to keep the child in the home.

To fulfill this obligation, the attorney should require the agency to document the specific problems that resulted in removal, the services short of removal that the agency considered to remedy these problems, the services that were actually offered to the family, and the reason that these services were either refused or unsuccessful. The attorney should demonstrate, either by documentary evidence or oral testimony, why the service was an appropriate response to the problem.

3. Represent only the Agency, Not the Child

Take direction from and represent only the agency and refuse to represent the child, on the grounds that such dual representation is a conflict of interest.

In dependency proceedings, all parties believe they are advocating for the child's best interests. However, acting in the child's best interests and acting as the child's legal representative are different matters. It is common practice in many juvenile courts for the agency attorney to represent both the agency and the child. This dual representation poses an ethical problem for the attorney because of the many areas of potential conflict of interest. For example, the agency may want the child to remain in foster care, while the child expresses a strong desire to return home. The court should, therefore, appoint a separate attorney for the child in these proceedings. If the court refuses, the attorney must declare a conflict and refuse to represent both the agency and the child.¹⁴

4. Interview the Agency Social Worker

Talk with the worker assigned to the case and review agency records for:

- a. Information about the case;
- b. The services provided or requested by the family prior to the child's removal;
- c. The plans for reunification, including services to be provided, arrangements for visits, and the projected date of the child's return home; and
- d. In appropriate cases, information about timely procedures to achieve a permanent placement for a child.

The attorney must know what services were provided in the past and the worker's plans for future services and the reunification of the family. The development of a good plan is just the first step. The attorney must monitor the plan's implementation to be sure all parties comply with it.

On the other hand, even if the plan is court ordered, the agency can improve services to a family when conditions change. For example, a family may become ready for reunification more quickly than was foreseeable at the initial hearing. In that case, the agency should provide all necessary reunification services. If necessary, the attorney should schedule a hearing to modify the plan.

If a court determines that reasonable efforts to preserve or reunify a family are not required, the agency attorney should ensure the agency is prepared for permanency hearings within 30 days after the court decides that reasonable efforts are not required. The agency attorney also should ensure that agencies make reasonable efforts to place a child in a timely manner in accordance with the child's permanency plan.¹⁵

At the permanency hearing, the agency attorney should ensure that the court has sufficient information to decide whether a child will be returned home, and if so, when; placed for adoption with the state filing a termination of parental rights petition; referred for legal guardianship; or placed in

"another planned permanent living arrangement."¹⁶

The agency attorney must also make sure that the agency files a petition to terminate parental rights when a child of any age has been in the care of the state for 15 months out of the most recent 22 months.¹⁷ These months are counted from the date of the first judicial finding of abuse or neglect or 60 days after the child's removal from the home, whichever is earlier.¹⁸

A termination petition must also be filed when a court determines that a child has been abandoned, or the parent has committed murder or voluntary manslaughter of another of their children, or a felony assault resulting in serious bodily injury to any of the parent's children.¹⁹

Federal law allows exceptions to the filing of these termination petitions when the child is in a relative's care; the child's case plan contains a compelling reason why filing the petition is not in the child's best interests; or the agency has not provided the child's family the services deemed necessary to return the child safely home.²⁰

5. Provide Agency Records to Attorneys for Other Parties

Make agency records available to attorneys for other parties to the fullest extent possible.

The child's interests are best served when all parties have full information about the agency's evaluation of the family and its response to that evaluation. This allows all attorneys to make a reasoned decision about the child's best interests and the possibility of reunification. The agency attorney has an obligation to share agency records with attorneys for the private parties involved.

In many instances, agencies are reluctant to share their records with clients because of concerns that the information contained in them will be damaging to the family or the child. For example, confidential communications made by a child to a worker should not be shared with the parents. These guidelines recommend that attorneys for all private parties have access to these records with the understanding they will not reveal information to clients if doing so may be damaging to the child or other family members.²¹

6. Ensure that Witnesses Attend the Hearing

Ensure that individuals are subpoenaed and attend the hearing who have had contact with the family and can testify to the efforts the agency made to keep the child in the home.

7. Inform the Court About Available Community Services

Inform the court about services available in the community or services required by the state social services plan,²² whether or not they were used in the particular case. If not

used, explain why using these services was not feasible. Also inform the court about services not available in the community that could remedy the family's problems and the agency's efforts to obtain these services.

The agency attorney must be an active advocate for the agency. As the individual with greatest access to agency records, the agency attorney is best qualified to inform the court about services available in the community and services necessary to the family but which the agency cannot provide. This may enable the court to order provision of these services from other funds or to request help from outside agencies in obtaining these services. It will also enable the court to assist the agency in developing new programs to better serve the community. The agency attorney can also act as a liaison between the agency and the community and media to advocate for improved community child protection.



ENDNOTES

1. The term dependency is used here to refer to all proceedings in which allegations are made that a child is in need of care, supervision, or placement because of parental abuse or failure to adequately care for or protect the child.
2. The name for this initial custody hearing, at which the court must decide if the child remains at home pending a determination of whether the child is a court dependent, varies from state to state. In some states, it is known as a detention hearing, in others a custody hearing. For purposes of these guidelines, it is referred to as a shelter care hearing.
3. 42 U.S.C. Section 622(b)(5).
4. 42 U.S.C. Section 675(5)(C).
5. 42 U.S.C. Section 671(a)(15)(E)(i).
6. 42 U.S.C. Sections 671(a)(15)(E)(ii) and 675(5)(C).
7. 42 U.S.C. Section 675(5)(E).
8. 42 U.S.C. Section 675(5)(F).
9. 42 U.S.C. Section 675(5)(E).
10. 42 U.S.C. Section 675(5)(E).
11. California Welfare and Institutions Code Section 361.5 (a)(2).
12. 42 U.S.C. Section 671(a)(15)(A).
13. See, e.g., *Stanley v. Illinois*, 405 U.S. 645 (1972); *Santosky v. Kramer*, 455 U.S. 745 (1982).
14. See *In re Patricia E.* (1984) 206 Cal.Rptr. 684.
15. 42 U.S.C. Section 671(a)(15)(E).
16. 42 U.S.C. Section 675(5)(C).
17. 42 U.S.C. Section 675(5)(E).
18. 42 U.S.C. Section 675(5)(F).
19. 42 U.S.C. Section 675(5)(E).
20. 42 U.S.C. Section 675(5)(E).
21. See *Smith v. Edmiston*, 431 F. Supp. 941 (W.D. Tenn. 1977).
22. Adoption Assistance and Child Welfare Act, 42 U.S.C. Sections 620 *et seq.*, requires states receiving funds under this Act to develop plans listing the services that are available in various areas of the state. 42 U.S.C. Section 622(b)(5).

GUIDELINES FOR JUDGES

33

BEST COPY AVAILABLE

SUMMARY OF GUIDELINES FOR JUDGES

MONITORING SOCIAL AND LEGAL SERVICES TO CHILDREN AND FAMILIES

1. Know what child welfare and family preservation services are available in the community and what problems they can address.

Absent specific documentation as to why they are not needed, at least the following services should be available:
 - a. family preservation services;
 - b. generic family-based services;
 - c. cash payments for emergency needs/ongoing financial support;
 - d. services to meet basic needs such as food, clothing, and housing;
 - e. services to address specific problems
 - respite care
 - child care
 - counseling/psychotherapy
 - parenting training
 - life skills training/household management; and
 - f. facilitative services such as visitation and transportation.
2. Meet regularly with child welfare representatives and participants in the juvenile court process.
3. Understand child development principles, particularly the importance of attachment and bonding and the effects of parental separation on young children.
4. Encourage the child welfare agency to prevent unnecessary removal of children by providing services to protect them in their homes.
5. Encourage the development of agreements between law enforcement and the child welfare agency so that law enforcement officers do not remove children from their homes without prior coordination with the agency.
6. Know the child welfare agency's record of providing preventive and reunification services, as well as its rules and regulations, and monitor the agency's compliance with the reasonable efforts requirements.
7. Ensure that the child welfare agency is aware that failure to make reasonable efforts will result in a failure to receive federal reimbursement.

8. Be familiar with the agency's policies to implement concurrent planning and achieve permanency.
9. Establish a mandatory training program for attorneys representing parents and children.
10. Maintain a list of experts who can evaluate the reasonableness of services provided to keep a child in the home and on any harm that a child will experience if removed from the home or continued in out-of-home placement.

MAKING REASONABLE EFFORTS DETERMINATIONS

1. Permit all parties to review the child welfare agency's records to ensure a full and fair hearing on the merits.
2. Require the agency to prove that it made reasonable efforts and find the agency did so only if the evidence presented at the hearing is sufficient to satisfy the agency's obligation.
3. Permit any party to present testimony on the issue of reasonable efforts.
4. Grant brief continuances to allow attorneys for the parent or child to obtain evidence on reasonable efforts when appropriate and necessary. However, delays from continuances can be detrimental to the child, and they should be minimized by assuring that attorneys are appointed and receive agency reports sufficiently in advance of the hearing to permit a full investigation.
5. If the child can return home safely, with or without giving supportive services to the family, order that the child be returned home. If the child cannot return home but could have been maintained in the home if services had been provided earlier, state in the court order that reasonable efforts were not made.
6. If the child is ordered home, order provision of family maintenance services to keep the child safe.
7. If the court finds that a child must be removed, it should permit a full hearing on the reunification plan and order appropriate reunification services.
8. Ensure in appropriate cases that permanency hearings are timely held, agencies make reasonable efforts to timely place children in permanent placements, and agencies timely file petitions to terminate parental rights.

9. If the court finds that reasonable efforts have not been made, it should hold the agency accountable for its performance. For example, the court can:
 - subpoena agency witnesses to testify about the agency's failure to make reasonable efforts
 - allow the agency a brief continuance to show why a negative finding should not be made
 - order the agency not to seek reimbursement for the cost of the child's care
 - order the agency to develop specific services and file appropriate documents where necessary
 - issue orders to show cause or contempt orders
 - submit reports on noncompliance to state or federal agencies
10. The court should request that the agency provide, on an ongoing basis, at least the following data:
 - the number of families provided preventive services
 - the number of families provided reunification services
 - the number of children kept at home with preventive services
 - the number of children placed in foster care and their length of stay
 - the number of children returned home with family reunification services
 - the number of children placed in long-term foster care and their length of stay
 - the number of children placed for guardianship/adoption and the number of guardianship/adoption failures
 - the number of children awaiting permanent placement after permanency hearings

GUIDELINES FOR JUDGES

Federal law requires that child welfare agencies make reasonable efforts to prevent the removal of a child from his or her home, to reunify families when it is necessary to remove a child, and to find permanent homes for children who will not return to their families. The reasonable efforts requirement is designed to ensure the safety of children, prevent the unnecessary disruption of families, and ensure that every child has a permanent home.

To enforce the reasonable efforts provisions of the Adoption Assistance Act, the juvenile court must determine, in each case where federal reimbursement is sought, whether the agency has made the required reasonable efforts.¹ In addition, when Indian children are involved, the court must determine that "active efforts have been made to provide remedial services and rehabilitative programs to the family, and that these efforts have been unsuccessful."² The juvenile court judge must determine whether reasonable or active efforts have been made at the shelter care,³ dispositional,⁴ permanency, and review hearing stages.

The reasonable efforts determination is only one component of the effort to achieve permanence for a child. Therefore, these guidelines are not an exhaustive discussion of all efforts that the juvenile court can or should make toward family preservation, reunification or permanency for a child. However, following these guidelines is an important step toward ensuring the agency's responsiveness to the needs of families in crisis.

MONITORING SOCIAL AND LEGAL SERVICES TO CHILDREN AND FAMILIES

In many jurisdictions, the juvenile court is, by statute or community practice, responsible for overseeing the provision of services to dependent and delinquent children in its jurisdiction. In every jurisdiction, the juvenile court has the social and moral responsibility to ensure that children under its care receive adequate services. The recommendations that follow are directed at the role of the court in administering its own functions effectively and providing leadership on child welfare issues.

The juvenile court, as part of its general responsibility to ensure adequate care for children under its jurisdiction, should:

1. Know what child welfare and family preservation services are available in the community and what problems they can address.

Absent specific documentation as to why they are not needed, at least the following services should be available:

- a. family preservation services;

- b. generic family-based services;
- c. cash payments for emergency needs/ongoing financial support;
- d. services to meet basic needs such as food, clothing, and housing;
- e. services to address specific problems:
 - respite care
 - child care
 - evaluation and treatment for substance abuse/chemical addiction
 - counseling/psychotherapy
 - parenting training
 - life skills training/household management; and
- f. facilitative services such as visitation and transportation.



Information about available services is necessary for the court to exercise its jurisdiction over individual cases and to improve services to all children in its jurisdiction. To determine whether reasonable efforts have been made in a specific case, the court must be aware of appropriate services that could have been provided to the family and are readily available in the community. In addition, to determine whether children in its jurisdiction are adequately served by the local child welfare agency, the court must know what services the community provides, the quality of those services, and the services lacking in the community.

2. **Meet regularly with child welfare representatives and participants in the juvenile court process.**

Judges should be in close communication with the director and other representatives in the child welfare agency, the administrators of legal offices, court administration and other participants in the juvenile court process. Regular meetings provide an opportunity to resolve ongoing problems, introduce new rules or policies, and discuss emerging child welfare issues, including new cases and legislation.

3. **Understand child development principles, particularly the importance of attachment and bonding and the effects of parental separation on young children.**

In order to protect the interests of children and to understand the impact of the court's decisions on children, judges should be well-versed in basic child development principles. Training on child development is not typically part of traditional legal education, and is often not part of specialized training for juvenile court bench officers either. Judges can provide the necessary leadership to ensure that bench officers, as well as other participants in the court process, receive training related to the developmental needs and capacities of children at various ages. The reference list included as an appendix to this handbook includes citations to child development texts.

4. **Encourage the child welfare agency to prevent unnecessary removal of children by providing services to protect them in their homes.**

State and federal laws and good social work practice require that all efforts to keep a child safely in the home be exhausted prior to removal. Social welfare literature highlights the harm to children of unnecessary separation from their families and home communities. The court, as an advocate for children in its jurisdiction, should encourage the child welfare agency to use available services prior to removing children from their homes. The court can do this through reasonable efforts rulings in individual cases, and by meeting with agency

representatives to encourage them to meet these requirements.

Juvenile courts have an important role to fill as educators of individuals appearing before them. Child welfare agencies are particularly responsive to the court's awareness of deficiencies in their practice. In addition, the court can help agencies obtain necessary services and funds.

5. **Encourage the development of agreements between law enforcement and the child welfare agency so that law enforcement officers do not remove children from their homes without prior coordination with the agency.**

If law enforcement officers alone decide to remove a child from his or her home, efforts to keep the child in the home will not be made because most law enforcement agencies do not have the resources or training to make reasonable efforts. Instead, law enforcement officers should investigate cases jointly with the child welfare agency so that removal does not occur without the agency's advice and approval.

6. **Know the child welfare agency's record of providing preventive and reunification services, as well as its rules and regulations, and monitor the agency's compliance with the reasonable efforts requirements.**

Monitoring may best be accomplished by maintaining records of the outcomes of the court's determinations on the reasonable efforts requirement. For example, a court may keep statistics on the number of cases in which the requirement was met and the number of cases in which it was not met. These statistics will show where the agency's strengths and weaknesses lie, and enable both the court and the agency to improve services to families. The court may also ask for regular reports from the agency and other organizations or agencies that monitor compliance with state or federal law.

If the court notices an ongoing problem in providing services to families, it should ask the agency to seek out other services and to report to the court on their availability. The court might also ask the agency to report on an annual basis the percentage and number of children placed in foster care and remaining in in-home supervision; the percentage and number of children placed for adoption or guardianship, the number returned home and the number remaining in foster care; and the percentage of the agency's budget spent on family maintenance or reunification services and on residential placements.

7. **Ensure that the child welfare agency is aware that failure to make reasonable efforts will result in a failure to receive federal reimbursement.**

Under federal law, an agency cannot be reimbursed for the cost of a child's out-of-home care unless the reasonable efforts requirement is met.⁵ The

agency should know that the court is aware of and will enforce this requirement.

8. **Be familiar with the agency's policies to implement concurrent planning and to achieve permanency.**

ASFA requires agencies to make reasonable efforts to assist children in achieving a permanent living situation in a timely manner. The 1997 changes also permit agencies to work towards permanency concurrently with work toward reunification.

9. **Establish a mandatory training program for attorneys representing parents and children.**

Many attorneys practicing in juvenile court have no prior experience. These attorneys may not be aware of standards of practice either for juvenile court personnel or for the child welfare agency. Further, they may not be familiar with child development issues or with the importance of the statutory requirements designed to protect children. For these reasons, specialized training for attorneys who practice in juvenile court is essential. Unfortunately, since most law schools offer little or no course work on juvenile law and procedure, this training must be provided by the juvenile court itself.

The court should offer additional training for attorneys who represent children. Since these clients are often unable to speak for themselves, their attorneys must be aware of children's special needs and of techniques for communicating with them. Specialized training also clarifies the unique role of the attorney for the child.

Some juvenile courts also establish standards of representation in dependency court which may be incorporated into local court rules. These standards often require specified training for attorneys representing parties in dependency cases, and incorporate local court policy on procedural and substantive issues unique to dependency practice.

10. **Maintain a list of experts who can evaluate the reasonableness of services provided to keep a child in the home and on any harm that a child will experience if removed from the home or continued in out-of-home placement.**

The court should identify individuals trained in child welfare practice who can serve as consultants to the court or to attorneys on the appropriateness of certain services. Community agency workers as well as teachers at local schools, colleges, and universities are potential sources of such expertise.

The court should use these experts in two ways. First, the court can call upon them to serve as neutral experts to resolve conflicts between the parties. Second, the court should refer inexperienced attorneys, particularly

attorneys for children, to these experts for assistance in determining the best interests of their clients. The court should be prepared to reimburse the experts for their time in assisting indigent clients or children.

MAKING REASONABLE EFFORTS DETERMINATIONS

A reasonable efforts determination is required whenever a court decides that a child should be placed or remain outside the home. Under federal law, federal reimbursement for a foster care placement may not be made unless the court finds that the agency has met the reasonable efforts requirement. The court's finding should be specific and should include information about the problems faced by the family, efforts that were made to maintain the child in the home and alleviate the problems, whether the efforts made were reasonable, and the reasons why they were unsuccessful.⁶



The court should determine whether the agency has made reasonable efforts to keep the child at home at the earliest point of court involvement and at each subsequent court hearing. Hearings include the initial shelter care hearing, the dispositional hearing, and all review hearings, including the permanency hearings. Under federal law, reviews must be conducted either by the agency or by the court every six months while a child is in placement. A hearing to develop a permanent plan must be conducted by the court within 12 months of the time the child entered foster care.⁷ Courts should also review cases whenever the child's situation changes and substantial modifications of the case plan are necessary.

In conducting hearings on whether children should be removed from their home or remain outside their homes, the court should:

1. **Permit all parties to review the child welfare agency's records to ensure a full and fair hearing on the merits.**

To adequately represent their clients, attorneys for parents and children must have all the information the agency possesses as soon as possible. The court should prohibit disclosures to clients of information that could be harmful to them.

The court should enforce the agency's obligation to provide timely reports to the parties prior to hearing. However, if the agency's records have not been available to the attorney representing the parents or the child before the day of the hearing, the court should consider a brief continuance, as discussed later in this section, to enable the attorney to review the records fully.⁸

2. **Require the agency to prove that it made reasonable efforts and find the agency did so only if the evidence presented at the hearing is sufficient to satisfy the agency's obligation.**

The reasonable efforts finding is as important an element of the case as a finding on abuse or neglect. The court should therefore require the agency to present evidence on which it can base its determination. It should not accept the agency's unsupported assertion that reasonable efforts have been made. The court should conduct a full hearing on the question of reasonable efforts and allow attorneys for parents and children to cross-examine agency witnesses on efforts that have been made to keep the child in the home.

3. **Permit any party to present testimony on the issue of reasonable efforts.**

A full and fair hearing requires that all parties be permitted to present evidence on every material aspect of the case, including the reasonable efforts determination. As noted above, this may require the court to appoint experts to assist attorneys for both the parents and the children.

Attorneys for children must be full participants in shelter care hearings, since the child's interests may not be the same as those of either the agency or the parent. Children should be allowed to present evidence and, if they desire, to speak on their own behalf.

4. **Grant brief continuances to allow attorneys for the parent or child to obtain evidence on reasonable efforts when appropriate and necessary. However, delays from continuances can be detrimental to the child, and they should be minimized by assuring that attorneys are appointed and receive agency reports sufficiently in advance of the hearing to permit a full investigation.**

Because of the brief time between when the child is taken into custody and the shelter care hearing, attorneys often are appointed on the day of the shelter care hearing and first meet their clients at the hearing. This practice places parents and children at a great disadvantage in presenting evidence, particularly on an issue as complex as whether reasonable efforts to keep the child in the home have been made. Attorneys for very young children may not be able to determine what the child wants or what is in the child's best interests without additional time to obtain the assistance of a psychologist or social worker. Courts should appoint attorneys for children and parents as early in the process as possible. However, when attorneys are not given adequate time to prepare, the court should grant brief continuances to permit them to do so.

The same considerations do not apply to the agency attorney, since the agency should have in its possession all evidence necessary to demonstrate that it has made reasonable efforts. Continuances requested by the agency should not be allowed without the agreement of all parties.

Continuances should be brief, since the child will, in most cases, remain out of the home during the delay. A continuance of two court days should allow ample time for the attorney to obtain expert assistance without subjecting the child to unnecessary detention. Continuances at dispositional or review hearings should be granted only under extraordinary circumstances, since attorneys should have had adequate time to review the records and contact clients and witnesses.

5. **If the child can return home safely, with or without giving supportive services to the family, order that the child be returned home. If the child cannot return home but could have been maintained in the home if services had been provided earlier, state in the court order that reasonable efforts were not made.**

If, by providing reasonable services, an agency could safely return a child to the home, the child should be returned home and the agency ordered to provide preventive services. Where state law permits, the court should consider not only ordering the provision of services if the child returns home, but also

imposing conditions on the family. For example, in sexual abuse cases, the court can order that the alleged perpetrator be removed from the home pending the final resolution of the matter. Similarly, when the agency alleges that children have been left unsupervised, the court can require a worker to supervise the home to make sure the situation does not recur. The safety of the child should always be the court's primary concern.

In some cases, the child cannot be returned home safely, although reasonable efforts made earlier would have avoided the need for removal. In these situations, the court should order continued detention of the child but note in the court order that reasonable efforts to keep the child in the home were not made. This procedure protects the child but penalizes the agency for failure to comply by preventing it from seeking federal reimbursement for the child's care.

6. **If the child is ordered home, order provision of family maintenance services to keep the child safe.**

If a child is returned home, the court should order provision of all the services necessary to ensure his or her safety. This not only benefits the child, but also diminishes the probability of future removal.

7. **If the court finds that a child must be removed, it should permit a full hearing on the reunification plan and order appropriate reunification services.**

Federal law requires reasonable efforts to reunify the parent and child. If the court determines that reasonable efforts to maintain the family have failed and that the child should remain out of the home, it should order the agency to provide services aimed at reunifying the family. To do so, the court should know what services the family needs.

In some jurisdictions, the court does not have the authority to order the agency to provide specific services. In these jurisdictions, the court should state in its order that the agency will provide appropriate reunification services.

In jurisdictions where the court can order specific services, it should list those services it finds to be appropriate. In particular, the court should make a specific visitation order. This order should include a visitation schedule that can be expanded at the discretion of the social worker. The order should also specify the time for visitation, the location of visitation, necessary transportation arrangements, and any specific restrictions on visitation that the court requires or will permit. If visitation is limited in any way or is totally denied, the reason for this limitation or denial should be specifically set out, and the court should specify conditions under which this arrangement can be modified.

- 8. Ensure in appropriate cases that permanency hearings are timely held, agencies make reasonable efforts to timely place children in permanent placements, and agencies timely file petitions to terminate parental rights.**

ASFA requires the court to hold a permanency hearing within 30 days after it determines reasonable efforts to reunify are not required. At the permanency hearing, the court must determine whether a child will be returned home (and if so, when); placed for adoption with the state filing a termination of parental rights petition; referred for legal guardianship; or placed in "another planned permanent living arrangement."⁹ Courts must also ensure that agencies make reasonable efforts to place a child in a timely manner in accordance with the child's permanency plan.¹⁰

ASFA also requires an agency to file a petition to terminate parental rights when a child of any age has been in the care of the state for 15 months out of the most recent 22 months.¹¹ These months are counted from the date of the first judicial finding of abuse or neglect, or 60 days after the child's removal from the home, whichever is earlier.¹² This time will run even if there has been no adjudication. A termination petition must also be filed when a court had determined that a child has been abandoned, or that the parent has committed murder or voluntary manslaughter of another of their children, or felony assault that results in serious bodily harm of any of their children.¹³

The legislation establishes exceptions to the requirement that termination petitions be filed when the child is in a relative's care; the child's case plan contains a compelling reason why filing the petition is not in the child's best interests; or the agency has not provided the child's family the services deemed necessary to return the child safely home.¹⁴

- 9. If the court finds that reasonable efforts have not been made, it should hold the agency accountable for its performance. For example, the court can:**
- subpoena agency witnesses to testify about the agency's failure to make reasonable efforts
 - allow the agency a brief continuance to show why a negative finding should not be made
 - order the agency not to seek reimbursement for the cost of the child's care
 - order the agency to develop specific services and file appropriate documents where necessary
 - issue orders to show cause or contempt orders
 - submit reports on noncompliance to state or federal agencies

The court must exercise control over cases in its jurisdiction and require the agency to provide the services to which the child or family is entitled. In cases in which reunification is not the case plan, the court must ensure that the agency complies with its mandate to place children in permanent homes in a timely manner.

In some cases, workers are prohibited by the agency's regulations or policy from providing a service that would permit the child to remain in the home. In these situations, the court should not hesitate to require the agency's administrative personnel to attend a hearing to demonstrate why provision of the service is not possible. In addition, the court, in its role as an advocate for children, should require the agency to develop an adequate plan for the provision of these services or placements and to function in a way that provides maximum protection for children.

The court should be especially vigilant for problems that arise in providing direct benefits, such as payment of utilities, rent, or income maintenance, to clients. The court should require the agency to identify alternate sources of funding for some of these programs, such as Medicaid or school programs. The court should emphasize to the agency the high financial and psychological costs of maintaining a child in out-of-home care, compared to the minimal cost of paying the family's initial rent, security deposit, or utility bill.

The court should use its power under federal law to require the agency to provide services that are not routinely available or to forgo federal reimbursement for the cost of placement.

10. The court should request that the agency provide, on an ongoing basis, at least the following data:

- the number of families provided preventive services
- the number of families provided reunification services
- the number of children kept at home with preventive services
- the number of children placed in foster care and their length of stay
- the number of children returned home with family reunification services
- the number of children placed in long-term foster care and their length of stay
- the number of children placed for guardianship/adoption and the number of guardianship/adoption failures
- the number of children awaiting permanent placement after permanency hearings

In order to monitor the agency's compliance with the reasonable efforts requirement, the court needs data concerning the types of services provided to

families and the resulting status of children under its jurisdiction. Thus, the court should request data on child welfare practices from the agency. Alternatively, or in addition, the data should be provided to the local social services commission, juvenile justice advisory board, or other supervisory bodies, as appropriate.

Federal law requires states, as a condition of receiving increased funding under Title IV-B of the Social Security Act, to establish and maintain a foster care information system, including certain demographic information about children in foster care.¹⁵ Other data gathering efforts should be coordinated with this system.



ENDNOTES

1. P.L. 96-272, 42 U.S.C. Sections 670 *et seq.*
2. 25 U.S.C. Section 1912(d).
3. The name for this initial custody hearing, at which the court must decide if the child remains at home pending a determination of whether the child is a court dependent, varies from state to state. In some states it is known as a detention hearing, in others a custody hearing. For purposes of these guidelines, it is referred to as a shelter care hearing.
4. At a dispositional hearing, a judge must decide where a child will be placed after the court has taken jurisdiction over the child. The name of this hearing also varies from state to state. For purposes of these guidelines, it is referred to as a dispositional hearing.
5. 42 U.S.C. Sections 671(a)(15) and 672(a)(1).
6. See, e.g., Indiana Code Section 31-6-4-6(e).
7. A child is considered to have entered foster care on the earlier of two dates: the date of the first judicial finding of abuse or neglect, or the date 60 days after the date on which the child was removed from the home. 42 U.S.C. 675(5)(F).
8. See *Smith v. Edmiston*, 431 F.Supp. 941 (W.D. Tenn. 1977).
9. 42 U.S.C. Section 675(5)(C).
10. 42 U.S.C. Section 671(a)(15)(E).
11. 42 U.S.C. Section 675(5)(E).
12. 42 U.S.C. Section 675(5)(F).
13. *Id.*
14. *Id.*
15. 42 U.S.C. Section 622(b)(10)(B).

GUIDELINES FOR CHILD WELFARE AGENCIES

50
BEST COPY AVAILABLE

SUMMARY OF GUIDELINES FOR CHILD WELFARE AGENCIES

ESTABLISHING PROGRAMS OF PREVENTIVE, REUNIFICATION, AND PERMANENCY SERVICES

1. Assess the Need for Services

The agency should determine the need for preventive, reunification, and permanency services on a statewide, regional, and local basis, so that programs may be designed and requests to the legislature may be tailored to meet the actual need for services. As part of the assessment process, the agency should describe, as accurately as possible, who it is serving and why.

2. Develop a Comprehensive Plan for Preventive and Reunification Services to Achieve Permanency

Each agency should develop a comprehensive plan that specifies how the services identified in the needs assessment, or otherwise identified in individual cases, will be funded and delivered. This plan should emphasize the provision of early, highly intensive services as the method most likely to promote family maintenance.

- a. The plan should provide for all identified services to be made available, either:
 1. directly by the public child welfare agency;
 2. through cooperative arrangements with other public agencies; or
 3. by a private agency under contract with the public agency.
- b. The agency should include in its plan sufficient and timely funding of necessary services.

3. Provide All Required Preventive and Reunification Services and Services to Achieve Permanency

The agency should provide all services specifically required by state law, as well as any service identified in the needs assessment and comprehensive plan.

Services that should be included in effective preventive and reunification programs may be categorized as "family preservation" services, generic "family-based" or "family-centered" services, cash payments, noncash services to meet basic needs, noncash services to address specific problems, "facilitative" services, and permanency services. Absent specific documentation as to why they are not needed, at least the following services should be available:

- a. Intensive family preservation services and generic family-based/family-centered services.
- b. Cash payments.
- c. Noncash services to meet basic needs and address specific problems.

- food and clothing
- housing
- respite care
- child care
- evaluation and treatment for substance abuse/chemical addiction
- counseling/psychotherapy
- parenting training
- life skills training/household management

d. Facilitative services:

1. visitation
2. transportation.

e. Permanency services.

4. Structure Service Delivery to Keep Families Together

Each agency should structure its service delivery system to enhance the likelihood that preventive services will be provided to those who need and can benefit from them, families will be maintained, and children who can safely return home will be reunified with their families.

- a. Workers are available by phone and in person 24 hours a day.
- b. Contact between workers and families is not limited to business hours on weekdays.
- c. Most contacts occur in the family home or in a setting comfortable for the family at times of day when they would be most helpful.
- d. Services are provided immediately and most intensively during family crises...
- e. Services are provided as the result of a joint agreement between the agency and parent and other concerned parties, including the child, foster parent, relatives, and community service providers.

5. Conduct Training

Each agency should establish ongoing training for its workers who are responsible for families with children at risk of removal or placed out of the home. This training should be provided both to supervisory and direct service staff. The training should cover at least the following:

- a. The content of the agency's written guidelines on reasonable efforts and achieving permanency.
- b. The scope of reasonable efforts and permanency requirements under state and federal law.

- c. Procedures and criteria for identifying emergencies that absolutely necessitate removing a child before providing any services.
- d. Procedures and criteria for assessing families' need for preventive and reunification services.
- e. The availability of specific services in the community, including eligibility criteria, payment requirements, and referral procedures.
- f. Methods for direct delivery of family-centered or home-based services.
- g. Procedures for implementing concurrent planning, and the availability of services designed to achieve permanency.
- h. The juvenile or family court's procedures for making the reasonable efforts determination, and for conducting permanency hearings.

6. Establish Appropriate Eligibility Criteria for Services

The agency should establish eligibility criteria for its preventive and reunification services and services to achieve permanency that include at least the following:

- a. Preventive services are available to any family whose children have come to the attention of the agency as being abused or neglected or at risk of abuse or neglect, unless either:
 - 1. the agency has determined, in accord with state law and its own written guidelines, that removal prior to providing services is necessary to protect the child; or
 - 2. a court has determined that the child should be removed.
- b. Reunification services are available to any family whose children have been placed in foster care unless a court determines that the family should not receive any reunification services at all or that all reunification services should be discontinued.
- c. Preventive and reunification services are available without charge for any family found eligible according to the above criteria.
- d. Services to achieve permanency are available for those children determined by a court to be unable to return safely home or for whom the agency is undertaking concurrent planning.
- e. Priority for the most intensive services goes to families for whom the risk of removal of their children is most imminent, or whose children are returning home from foster care.

7. Develop Written Guidelines, Procedures, and Protocols

The agency should develop its own written guidelines, procedures, and protocols on "reasonable efforts," covering each stage of its interaction with the family. These materials should be provided to every worker and should clearly articulate at least the following:

- a. Criteria for determining when to remove a child without provision of preventive services.
- b. Procedures to determine what services would allow a child to remain in, or return to, his or her family.
- c. Procedures to document services offered to a family and the family's response.
- d. Criteria for determining an appropriate visitation schedule.
- e. Procedures for involving parents and children of appropriate ages in the development of case plans.
- f. Procedures for implementing concurrent planning in appropriate cases.
- g. Criteria for terminating efforts to reunify a family.
- h. Criteria for ensuring timely permanency hearings are held and appropriate findings made.
- i. Criteria for determining when the agency should file termination of parental rights petitions.

MAKING REASONABLE EFFORTS IN EACH CASE

1. Make Good Faith Efforts to Prevent Removal

When a child first comes to the attention of an agency as a potentially abused or neglected child, and it appears to the agency that the child may have to be removed for his or her safety, the agency worker should ask, before removing the child, whether there is any assistance, in the form of cash payments, services in lieu of cash, or social support services, that would likely allow the child to remain safely at home. If so, the agency should either provide the assistance or meet a substantial burden of justifying why it cannot do so.

In deciding whether to remove a child rather than keep the child at home with services, and in deciding what services to provide, the worker should do at the least the following:

- a. Assess the family situation to determine the likelihood of protecting the child effectively in the home. The worker should identify the *specific* problems, if any,

that place the child at imminent risk of serious harm.

- b. Determine whether any available services might effectively address the family's or child's specific problems.
- c. Consider alternative ways of addressing the family's needs — short of removal — that would allow the child to be safe when the services regularly provided by the agency appear unlikely to meet the family's needs or have inappropriately long waiting lists.
- d. Inform the family about available services that might address the family or child's problems.
- e. Offer the family those services that the agency considers most likely to address the problems creating the risk of the child's removal.
- f. Give the family an opportunity to request other services not offered by the agency that the family believes might mitigate the risk of removal.
- g. Provide a means for the child or family to seek review of the agency's failure to provide services that the family believes would eliminate the need for the child's removal.

2. Make Good Faith Efforts to Reunify the Family

In making good faith efforts to reunify a family, the agency should follow the same principles set forth above for preventing removal.

The agency's reunification efforts should include at least the following *additional* steps:

- a. Develop an appropriate case plan.
- b. Establish an appropriate visitation schedule and other measures to ensure visits are facilitated and actually occur.

3. Make Good Faith Efforts to Achieve Permanency for Children

Ensure in appropriate cases that permanency hearings are timely held; petitions to terminate parental rights are timely filed; and reasonable efforts are made to timely place children in permanent placements.

GUIDELINES FOR CHILD WELFARE AGENCIES

Federal law requires that child welfare agencies make reasonable efforts to prevent the removal of a child from his or her home, to reunify families when it is necessary to remove a child, and to find permanent homes for children who will not return to their families. The reasonable efforts requirement is designed to ensure the safety of children, prevent the unnecessary disruption of families, and ensure that every child has a permanent home.

To implement the reasonable efforts requirement, child welfare agencies must develop a broad range of preventive, reunification and permanency services, and ensure that these services are accessible to children and families. Moreover, agencies must make reasonable efforts to prevent placement, reunify families, and achieve legal permanency for children *in each case*.

Making reasonable efforts is only one part of serving children and families in the child welfare system. Therefore, these guidelines are not an exhaustive discussion of all efforts that the child welfare agency can or should make toward family preservation, reunification or permanency for a child. However, following these guidelines is an important step toward ensuring the agency's responsiveness to the needs of families in crisis.

ESTABLISHING PROGRAMS OF PREVENTIVE, REUNIFICATION, AND PERMANENCY SERVICES

For a child welfare agency¹ to make reasonable efforts to keep children in their homes, it must establish appropriate programs of preventive and reunification services to meet the needs of families whose children would otherwise be placed in foster care. At the same time, the agency must also establish service programs to assist children in achieving legal permanency. To establish and maintain effective service programs, each agency should:

1. Assess the Need for Services

The agency should determine the need for preventive, reunification, and permanency services on a statewide, regional, and local basis, so that programs may be designed and requests to the legislature may be tailored to meet the actual need for services. As part of the assessment process, the agency should describe, as accurately as possible, who it is serving and why.

The purpose of the needs assessment should be to establish the extent to which existing services are used, the problems or issues that are not addressed by existing services, and the types of services not currently available.

Determining the need for services involves a variety of formal and informal techniques. The agency should review all available data about the use of existing programs. It should also survey its workers to determine which

services might have prevented removal or increased a child's opportunity for an earlier permanent placement in different categories of cases. Workers and supervisors should compile information, including recommendations from agency consultants, experts and outside agencies, concerning the nature of problems that necessitate removal and services that have been helpful in overcoming these problems and facilitating family maintenance.

The needs of children and families may change or evolve over time, causing a shift in the the types of services required. Therefore, agencies should conduct the assessment process on a regular, ongoing basis.

The agency also should compile information about its progress in achieving earlier permanent placements for children, including the specific recruitment efforts made, the timeliness of adoption studies of both the child and potential adoptive families, and the prompt pursuit of adoption assistance funds for special needs children.²



2. Develop a Comprehensive Plan for Preventive and Reunification Services to Achieve Permanency

Each agency should develop a comprehensive plan that specifies how the services identified in the needs assessment, or otherwise identified in individual cases, will be funded and delivered. This plan should emphasize the provision of early, highly intensive services as the method most likely to promote family maintenance.

The Adoption Assistance Act requires each state agency to develop and submit a child welfare services plan under Title IV-B of the Social Security Act.³ ASFA uses the term "time-limited reunification services" and defines these to include:

1. individual, group, and family counseling;
2. inpatient, residential, or outpatient substance abuse treatment;
3. mental health services;
4. services to address domestic violence;
5. temporary child care and therapeutic services to families, including crisis nurseries; and
6. transportation to above services.⁴

To the extent that agencies fail to discharge their obligations to make reasonable efforts or provide preventive services to keep families together, they may be ordered by the court to develop and implement a plan consistent with their statutory and constitutional obligations.⁵

- a. The plan should provide for all identified services to be made available, either:
 1. directly by the public child welfare agency;
 2. through cooperative arrangements with other public agencies; or
 3. by a private agency under contract with the public agency.

When the child welfare agency uses the services of other public agencies to meet its reasonable efforts responsibilities, it should not simply refer families to other agencies and assume that its obligations have been met. Unless responsibility for a case has clearly been delegated to another agency and a mechanism for accountability has been established, the referring agency should retain responsibility for the case and for ensuring the family receives appropriate services.

- b. The agency should include in its plan sufficient and timely funding of necessary services.

A primary source of federal funding available to the states for preventive and reunification services is the appropriation under Title IV-B of the Social Security Act. In fiscal year 1999, this appropriation is \$275 million, in fiscal year 2000, \$295 million and in fiscal year 2001, \$305 million.⁶ Federal law

establishes certain fiscal incentives to encourage states to implement the reasonable efforts and permanency mandates.

First, federal funding of foster care maintenance payments for individual children is available only in cases where there has been a judicial determination that reasonable efforts to prevent placement or to reunify the family have been made.⁷

Second, states are eligible for federal adoption incentive payments if they increase the number of foster child and special needs adoptions over the base number of adoptions for that fiscal year.⁸

3. Provide All Required Preventive and Reunification Services and Services to Achieve Permanency

The agency should provide all services specifically required by state law, as well as any service identified in the needs assessment and comprehensive plan.

Services that should be included in effective preventive and reunification programs may be categorized as "family preservation" services, generic "family-based" or "family-centered" services, cash payments, noncash services to meet basic needs, noncash services to address specific problems, "facilitative" services, and permanency services.

This grouping of services includes some, such as cash payments, generally not considered "preventive" or "reunification" services. However, to the extent that any services contribute to preventing the removal of children from their homes or to facilitating their reunification with their families, they should be included within the scope of what is required to implement the "reasonable efforts" mandate.

Absent specific documentation as to why they are not needed, at least the following services should be available:

- a. Intensive family preservation services and generic family-based/family-centered services.

The provision of highly intensive services to families, usually in their own homes, for relatively brief periods of time, can be an alternative to the traditional agency casework model of placement prevention. The purpose of these intensive services is to avert the crisis, or improve the family situation, that creates imminent risk of the child's removal, and to enable the family to establish a situation that will permit the child to remain at home.

These programs include an assessment of the family's entire "ecological" context, flexibility in the timing of service provision, coordination of services from the family home rather than from the agency, and a focus on the family's strengths to promote independence and self-sufficiency. Often these

programs involve sending a worker into the home many hours a week.

Services referred to as "family-based" or "family-centered" involve principles similar to family preservation services, although they may not be as intensive. The term might, for example, describe anything from a single home visit to full "family preservation" services.

b. Cash payments.

A family's financial needs play a part in the majority of cases involving a child's removal from the home. Cash payments to meet both emergency and ongoing needs are critical services for these families.

c. Noncash services to meet basic needs and address specific problems.

- food and clothing
- housing
- respite care
- child care
- evaluation and treatment for substance abuse/chemical addiction
- counseling/psychotherapy
- parenting training
- life skills training/household management

d. Facilitative services:

The term "facilitative" is used here to describe visitation and transportation services because, without them, other services may be ineffective in preventing placement or promoting reunification.

1. visitation

Visitation has been recognized as critically important in facilitating reunification of children who have been placed in foster care, whether on an emergency or long-term basis. Frequency of visitation has been found to correlate closely with the likelihood of a child returning home. The diligence with which a parent visits is also often looked to as an indicator of whether or not a child should be returned home.

2. transportation.

When services are geographically inaccessible they will not be useful to the family in preventing placement or facilitating reunification. Therefore, it is appropriate for the agency to provide or arrange necessary transportation to ensure that the services it offers have the maximum effect. Federal law specifically includes transportation in its definition of "time-limited family reunification services."⁹

e. **Permanency services.**

Services to achieve permanency for children should include increased recruitment efforts of adoptive parents; use of cross-jurisdictional resources where necessary; placement of children on adoption exchanges early; preparation of timely adoption studies of both the child and potential adoptive family; and prompt pursuit of adoption assistance funds for special needs children.

Under ASFA, the federal government may provide technical assistance to assist states and local communities to increase the number of adoptions or other permanent placements for children in foster care. The technical assistance may include: (1) development of best practice guidelines for expediting parental rights terminations; (2) concurrent planning models; (3) development of specialized units/expertise to move children toward adoption; (4) development



of risk assessment tools to facilitate early identification of children who will be at risk of harm if returned home; (5) models to encourage fast tracking of children under one year of age into preadoptive placements; and (6) development of programs placing children into preadoptive homes whose parents' rights have not yet been terminated.¹⁰

4. Structure Service Delivery to Keep Families Together

Each agency should structure its service delivery system to enhance the likelihood that preventive services will be provided to those who need and can benefit from them, families will be maintained, and children who can safely return home will be reunified with their families.

Many experts recommend that services be structured and delivered in a manner that recognizes parental autonomy to the extent possible, consistent with the safety of the child, and that does not make the parent dependent on the agency. However, there may be circumstances in which a family needs *ongoing* services — financial, social, or other — to care adequately for their child at home. When a satisfactory situation exists in the home with the provision of such services and when the cost of providing the services on an ongoing basis is not prohibitive, some degree of dependence associated with long-term service delivery is acceptable.

At a minimum, the agency should ensure the following:

a. Workers are available by phone and in person 24 hours a day.

In many communities, nighttime calls to protective services result in police, and not social workers, responding. This contributes to the likelihood a child will be removed rather than kept in the home, because the police are not in a position to provide, or arrange for, preventive services. Thus, 24-hour availability of social workers is a particularly important component of any emergency family maintenance effort.

b. Contact between workers and families is not limited to business hours on weekdays.

This is especially important with respect to visitation. Agency policies or logistics often dictate that family visits occur during business hours at the agency offices. This works to the detriment of parents and children who would benefit from visiting with one another but who cannot do so during those hours because of employment, child care or transportation problems.

c. Most contacts occur in the family home or in a setting comfortable for the family at times of day when they would be most helpful.

d. Services are provided immediately and most intensively during family crises.

See the earlier discussion of intensive home-based/family-centered services. Provision of other services should also be most intensive at the time when removal is imminent (to prevent removal), or recent (to facilitate reunification as quickly as possible).

- e. **Services are provided as the result of a joint agreement between the agency and parent and other concerned parties, including the child, foster parent, relatives, and community service providers.**

The parent should be involved in developing the case plan if the child has been removed from the home. If the child is still at home, the agency should involve the parent in determining what services would protect the child at home and be acceptable to the family. The child, if old enough, should participate in the development of the plan along with the child's counsel or guardian *ad litem*. In addition, members of the "treatment team" and the family's support system should assist in developing a realistic plan.

5. Conduct Training

Each agency should establish ongoing training for its workers who are responsible for families with children at risk of removal or placed out of the home. This training should be provided both to supervisory and direct service staff. The training should cover at least the following:

- a. The content of the agency's written guidelines on reasonable efforts and achieving permanency.
- b. The scope of reasonable efforts and permanency requirements under state and federal law.
- c. Procedures and criteria for identifying emergencies that absolutely necessitate removing a child before providing any services.
- d. Procedures and criteria for assessing families' need for preventive and reunification services.

Workers should carefully assess each child's and family's circumstances to determine what services are needed. Workers must be trained to make such assessments appropriately.

- e. The availability of specific services in the community, including eligibility criteria, payment requirements, and referral procedures.
- f. **Methods for direct delivery of family-centered or home-based services.**

Training on direct delivery of intensive home-based or family-centered services is appropriate only for those social workers who will be involved in actually

delivering these services. However, all social workers who have a role in deciding whether a child should be removed or in providing preventive and reunification services should receive training in the philosophy of intensive home-based or family centered services and in the criteria used for identifying families who might benefit from such services.

- g. Procedures for implementing concurrent planning, and the availability of services designed to achieve permanency.
- h. The juvenile or family court's procedures for making the reasonable efforts determination, and for conducting permanency hearings.

The agency should participate in cross-disciplinary training for social workers, attorneys, and bench officers to ensure that all of the professionals involved in the dependency process understand the legal mandates and court procedures related to reasonable efforts and permanency.

6. Establish Appropriate Eligibility Criteria for Services

The agency should establish eligibility criteria for its preventive and reunification services and services to achieve permanency that include at least the following:

- a. Preventive services are available to any family whose children have come to the attention of the agency as being abused or neglected or at risk of abuse or neglect, unless either:
 - 1. the agency has determined, in accord with state law and its own written guidelines, that removal prior to providing services is necessary to protect the child; or
 - 2. a court has determined that the child should be removed.
- b. Reunification services are available to any family whose children have been placed in foster care unless a court determines that the family should not receive any reunification services at all or that all reunification services should be discontinued.
- c. Preventive and reunification services are available without charge for any family found eligible according to the above criteria.
- d. Services to achieve permanency are available for those children determined by a court to be unable to return safely home or for whom the agency is undertaking concurrent planning.

As described above, reasonable efforts must also be made to find permanent homes for children for whom reunification is either being pursued at the same time as adoption planning (known as "concurrent planning") or has been terminated or never ordered in the first place.¹¹ The child's case plan must document the specific recruitment efforts and other steps the agency has

taken to achieve permanence for the child.¹²

- e. **Priority for the most intensive services goes to families for whom the risk of removal of their children is most imminent, or whose children are returning home from foster care.**

However, an agency that recognizes that a child might risk removal in the future if no services are provided should not wait until the risk of removal is imminent. Rather, the agency should provide services at the maximum appropriate level of intensity beginning as soon as the child and family come to its attention to keep the situation from developing into a crisis.

7. Develop Written Guidelines, Procedures, and Protocols

The agency should develop its own written guidelines, procedures, and protocols on "reasonable efforts," covering each stage of its interaction with the family. These materials should be provided to every worker and should clearly articulate at least the following:

- a. **Criteria for determining when to remove a child without provision of preventive services.**

Three criteria are important for determining whether to leave a child in the home:

- (1) is there sufficient parental concern or desire to maintain the child at home?
- (2) in the case of an older child willing to express choice, is there a willingness to live at home and work out areas of difficulty?
- (3) can an adequate range of "assistance" be garnered at the community level to sustain the child and the family?

At a minimum, the guidelines should require the following questions be addressed:

- (1) what is the harm that removal is designed to prevent?
- (2) can less-intrusive measures than placement prevent that harm?
- (3) which services other than placement have been considered and rejected and why?
- (4) which services have been offered to the family and rejected?

BEST COPY AVAILABLE

For example, the decision to remove a child may be warranted when the parent refuses services, the parent is unavailable, there is a high danger of severe physical injury that cannot be mitigated without removal, or the child expresses a desire to be removed.

b. Procedures to determine what services would allow a child to remain in, or return to, his or her family.

Child welfare administrators should provide protocols to enable social workers to carefully assess the nature of the problem placing the child at risk of removal or that necessitated removal. After determining the problem, social workers should carefully consider the list of services currently available from the agency (or that could be purchased or otherwise provided) to determine which, if any, of these services would be most likely to prevent removal or facilitate reunification. Consultation with experts may be part of this process, but a psychological evaluation should not be required in cases in which the reason for removal is not closely connected to the psychological problems of the child or the parent.

c. Procedures to document services offered to a family and the family's response.

The case plan can be used to document services offered to and accepted by the parents for children placed in foster care. A comparable mechanism should be developed for preventive services for families in which children have not been removed.

d. Criteria for determining an appropriate visitation schedule.

Key issues to address include:

- when visits should begin
- what the frequency and length of contacts should be
- who should be included in the visits
- where visits should take place
- when visits should be limited or terminated

e. Procedures for involving parents and children of appropriate ages in the development of case plans.

Parents and children are more likely to participate effectively in the implementation of case plans if they participate in their development and the plans' objectives reflect the wishes of parents and children.

f. Procedures for implementing concurrent planning in appropriate cases.

ASFA requires agencies to make reasonable efforts to assist children in achieving a permanent living situation in a timely manner. It also permits agencies to

work towards permanency concurrently with work toward reunification. To implement concurrent planning, the agency might:

- advise parents from the beginning of a case about the possibility of their rights to their child or children being terminated if they fail to comply with their case plan
- place siblings in the same foster home at the time of initial placement
- increase recruitment of foster/adopt parents
- train foster parents to act as mentors for the parents and encourage a relationship between them
- place children on adoption exchanges as soon as possible
- document steps to locate permanent homes for children
- ensure timely completion of reports, including children's adoption evaluations, home studies of potential adoptive parents, and assessment of children's qualification for adoption subsidies

g. Criteria for terminating efforts to reunify a family.

A primary goal of both the Adoption Assistance Act and ASFA, in addition to maintaining family integrity and providing safe homes for children, is to promote permanent living arrangements for those children who cannot return home. To further this goal, federal law now requires that permanency hearings for children be held within 12 months of their placement in foster care.¹³

ASFA allows reasonable efforts *not* to be made in three situations. These include:

1. if the parent has subjected the child to "aggravated circumstances," as defined by each state;¹⁴
2. if the parent has committed murder¹⁵ or voluntary manslaughter of another of their children, or felony assault¹⁶ that results in serious bodily harm of any of their children; or
3. if the parent's rights to a sibling of the child have been terminated.¹⁷

Although some states have statutes specifying the criteria for terminating reunification services, agencies also should develop detailed guidelines for determining when providing such services is no longer appropriate or should not be provided at all.¹⁸

h. Criteria for ensuring timely permanency hearings are held and appropriate findings made.

ASFA requires a court to hold a permanency hearing either if a child remains in foster care for 12 months, or within 30 days after it determines reasonable efforts to reunify are not required.¹⁹ At the permanency hearing, the court must determine whether a child will be returned home and if so, when; placed for adoption with the state filing a termination of parental rights petition; referred for legal guardianship; or placed in "another planned permanent living arrangement."²⁰ Courts must also ensure agencies make reasonable efforts to place a child in a timely manner in accordance with the child's permanency plan.²¹

i. **Criteria for determining when the agency should file termination of parental rights petitions.**

ASFA requires an agency to file a petition to terminate parental rights when a child of any age has been in the care of the state for 15 months out of the most recent 22 months.²² These months are counted from the date of the first judicial finding of abuse or neglect, or 60 days after the child's removal from the home, whichever is earlier.²³

A termination petition must also be filed when a court determines that a child has been abandoned, or the parent has committed murder or voluntary manslaughter of another of their children, or a felony assault resulting in serious bodily injury to any of the parent's children.²⁴

The legislation sets out three exceptions to the filing of these termination petitions. These include when the child is in a relative's care; if the child's case plan contains a compelling reason why filing the petition is not in the child's best interests; and if the agency has not provided the child's family the services deemed necessary to return the child safely home.²⁵

MAKING REASONABLE EFFORTS IN EACH CASE

The core of the reasonable efforts mandate is that the child welfare agency make reasonable efforts to prevent placement, reunify families, and achieve legal permanency for children *in each case*. This is both a required element of each state's Title IV-E state plan and a condition of federal funding for individual foster care placements.²⁶

1. **Make Good Faith Efforts to Prevent Removal**

When a child first comes to the attention of an agency as a potentially abused or neglected child, and it appears to the agency that the child may have to be removed for his or her safety, the agency worker should ask, before removing the child, whether there is any assistance, in the form of cash payments, services in lieu of cash, or social support services, that would likely allow the child to remain safely at home. If so, the

agency should either provide the assistance or meet a substantial burden of justifying why it cannot do so.

When a child or family has been known to an agency over a period of time during which the risk of harm to the child has increased progressively, the reasonable efforts requirement should be interpreted to require the agency to assist the family at the earliest possible date and in a manner most calculated to decrease the risk of harm to the child and to prevent the child's ultimate removal. The agency should not allow a situation of which it is aware to develop into one that poses a sufficient risk of harm to the child to warrant removal without further provision of services or assistance.

In deciding whether to remove a child rather than keep the child at home with services, and in deciding what services to provide, the worker should do at the least the following:

- a. Assess the family situation to determine the likelihood of protecting the child effectively in the home. The worker should identify the *specific* problems, if any, that place the child at imminent risk of serious harm.
- b. Determine whether any available services might effectively address the family or child's specific problems.

Services provided should be directed at the particular problem(s) contributing to the risk of removal.

- c. Consider alternative ways of addressing the family's needs — short of removal — that would allow the child to be safe when the services regularly provided by the agency appear unlikely to meet the family's needs or have inappropriately long waiting lists.

To fully implement the reasonable efforts mandate, agencies must not limit the services they offer to those that they have always offered, in the quantity they have found appropriate in the past. Individual families may have unusual needs or problems. Determining whether the agency has made reasonable efforts in an individual case depends on whether it has offered and provided services most likely to remedy a particular family's problems and keep the family together.

The agency should be prepared to provide, within reason, services for which it may not have an established program but which it can provide consistent with any legal funding limits. For example, if a certain type of respite is appropriate for a family with a disabled child, but the community is small and has no such respite care program, the agency should nonetheless provide the respite care if the child would otherwise require out-of-home placement, as long as it can do so consistent with any legal funding limits.

- d. Inform the family about available services that might address the family's or child's problems.

The family or child should be able to request services that the agency may not have offered but that the family thinks would be helpful in remedying its difficulties. The family cannot do so unless it knows what these services are.

- e. Offer the family those services that the agency considers most likely to address the problems creating the risk of the child's removal.

The social worker should ensure the family understands the nature of the services and why they are being offered.

- f. Give the family an opportunity to request other services not offered by the agency that the family believes might mitigate the risk of removal.
- g. Provide a means for the child or family to seek review of the agency's failure to provide services that the family believes would eliminate the need for the child's removal.

California has established a fair hearing system that notifies families of available services and gives them an opportunity to apply for services or request a fair hearing if services are denied. Families receive detailed notices of action alerting them to what services they may request and the procedures for seeking review of denials.

2. Make Good Faith Efforts to Reunify the Family

In making good faith efforts to reunify a family, the agency should follow the same principles set forth above for preventing removal.

The agency's reunification efforts should include at least the following *additional* steps:

- a. Develop an appropriate case plan.

State courts in individual cases have focused on the importance of the case plan in providing services to a family. For example, in one case, the court required the agency to show a "good faith effort to develop and implement a family reunification plan."²⁷ Other courts have held that the plan must be specifically tailored to fit the circumstances of each family and designed to eliminate those conditions which led to the juvenile court's jurisdictional finding.²⁸

- b. Establish an appropriate visitation schedule and other measures to ensure visits are facilitated and actually occur.

A visitation schedule should be part of the case plan. The worker should consider the length, frequency and location of visits, and use the visit to involve the parent in such activities as the child's medical appointments, school meetings, or conjoint or family therapy sessions. Visits should occur in the biological parents' home or the foster family's home, whenever possible, or otherwise in a dignified setting that is natural and homelike. Especially with younger children, visits should give parents the opportunity to provide hands-on care for the child such as feeding, bathing, or putting the child to bed.

3. Make Good Faith Efforts to Achieve Permanency for Children

Ensure in appropriate cases that permanency hearings are timely held; petitions to terminate parental rights are timely filed; and reasonable efforts are made to timely place children in permanent placements.

ASFA requires permanency planning hearings within 30 days after the court determines reasonable efforts to reunify are not required. At the permanency hearing, the court must determine whether a child will be returned home; placed for adoption with the state filing a termination of parental rights petition; referred for legal guardianship; or placed in "another planned permanent living arrangement."²⁹

ASFA also requires child welfare agencies to file a petition to terminate parental rights when a child of any age has been in the care of the state for 15 months out of the most recent 22 months.³⁰

Finally, ASFA requires child welfare agencies to make reasonable efforts to place a child in a timely manner in accordance with the child's permanency plan.³¹

The shortened timelines under ASFA require child welfare agencies to begin working toward a permanent plan immediately. In order to meet these requirements, child welfare agencies should increase services to achieve permanency for children, including increased recruitment efforts of adoptive parents; use of cross-jurisdictional resources where necessary; placement of children on adoption exchanges early; preparation of timely adoption studies of both the child and potential adoptive family; and prompt pursuit of adoption assistance funds for special needs children.

ENDNOTES

1. Some states operate on a "state model" in which local agency employees are state employees; other states operate on a "county model" in which local agency employees are municipal or county employees. For purposes of federal law, the state agency is ultimately responsible for statutory mandates. However, many of the recommendations in these guidelines that are stated in terms of "the agency" or "the state agency" apply equally to county or municipal agencies that have immediate responsibility for carrying out the reasonable efforts mandate.
2. ASFA provides for adoption incentive payments to states under specified conditions. 42 U.S.C. Section 673b.
3. 42 U.S.C. Section 622.
4. 42 U.S.C. Section 629a(a)(7)(B).
5. *Cosentino v. Perales and Martin and Bill A. v. Gross*, No. 24388/85 (N.Y. Supreme Ct., N.Y. Co., preliminary injunction issued Apr. 27, 1987).
6. 42 U.S.C. Section 629(b).
7. 42 U.S.C. Section 672(a)(1).
8. 42 U.S.C. Section 673b. The base number of foster children and special needs adoptions is calculated according to a formula set out in 42 U.S.C. Section 673b(g)(4).
9. 42 U.S.C. Section 629a(a)(7)(B)(vi).
10. 42 U.S.C. Section 673b(g)(i).
11. 42 U.S.C. Sections 671(a)(15)(C) to 671(a)(15)(F).
12. 42 U.S.C. Section 675(1)(E).
13. 42 U.S.C. Section 675(5)(C). Federal law previously required these hearings to be held within 18 months of the child's placement in foster care.
14. In defining such circumstances, Congress provided that state law include but need not be limited to torture, abandonment, chronic abuse, and sexual abuse. U.S.C. Section 671(a)(15)(D)(i).
15. The "murder" exception also includes aiding, abetting, attempting, conspiring, or soliciting the crime or either murder or voluntary manslaughter. 42 U.S.C. Section 671(a)(15)(D)(ii)(III).
16. The felony assault must cause "serious bodily injury." 42 U.S.C. Section 671(a)(15)(D)(ii).
17. 42 U.S.C. Section 671(a)(15)(D)(iii).
18. See, e.g., California Welfare and Institutions Code Section 361.5(b).
19. 42 U.S.C. Section 675(5)(C); 42 U.S.C. Section 671(a)(15)(E)(i).
20. 42 U.S.C. Section 675(5)(C).
21. *Id.*
22. 42 U.S.C. Section 675(5)(E).
23. 42 U.S.C. Section 675(5)(F).
24. 42 U.S.C. Section 675(5)(E).
25. *Id.*
26. 42 U.S.C. Sections 671(a)(15) and 672(a)(1).
27. *In re Kristen W.* (1990) 271 Cal.Rptr. 629; 222 Cal.App.3d 234, 254.
28. *In re Dino E.* (1992) 8 Cal.Rptr.2d 416; 6 Cal.App.4th 1768, 1777.
29. 42 U.S.C. Section 675(5)(C).
30. 42 U.S.C. Section 675(5)(F).
31. 42 U.S.C. Section 671(a)(15)(E).

RESOURCE ORGANIZATIONS

American Bar Association Center on Children & the Law

740 15th Street, N.W.
9th Floor
Washington, D.C. 20005
(202) 662-1720
(202) 662-1755 fax
www.abanet.org/child

Child Welfare League of America

440 First Street, N.W.
Suite 310
Washington, D.C. 20001-2085
(202) 638-2952
(202) 638-4004 fax

CWLA Western Office

3200 Motor Avenue
Los Angeles, CA 90034-3710
(310) 287-1411
(310) 287-1413 fax
email: HN4743@handsnet.org
www.cwla.org

Children's Defense Fund

25 "E" Street, N.W.
Washington, D.C. 20001
(202) 628-8787
(202) 662-3510 fax
www.childrensdefense.org

Children's Rights Incorporated

404 Park Avenue South
New York, NY 10016
(212) 683-2210
(212) 683-4015 fax
email: info@childrensrights.org
www.childrensrights.org

National Center for Youth Law

405 14th Street
15th Floor
Oakland, CA 94612
(510) 835-8098
(510) 835-8099 fax
www.youthlaw.org

National Council of Juvenile and Family Court Judges Permanency Planning for Children University of Nevada

P.O. Box 89705
Reno, NV 89507
(775) 327-5300
(775) 327-5306 fax
email: ppp@pppncjfcj.org
www.pppncjfcj.org

Youth Law Center

417 Montgomery Street
Suite 900
San Francisco, CA 94104
(415) 543-3379
(415) 956-9022 fax
email: info@youthlawcenter.com
www.youthlawcenter.com

INTERNET RESOURCES

American Bar Association Center on Children and the Law

<http://abanet.org/child/>

The mission of the ABA Center on Children and the Law is to improve children's lives through advances in law, justice, knowledge, practice and public policy. Their website provides information on their publications, annual report, periodicals, pro bono work, policies, and lawyer standards. In addition, the website hosts a child protection law reform bulletin board, discussion groups, and useful links.

Child Abuse Prevention Network

<http://child.cornell.edu/>

Geared toward professionals in the field of child abuse and neglect, this website provides workers with unique and powerful tools to support the identification, investigation, treatment, adjudication, and prevention of child abuse and neglect.

Child Welfare League of America

<http://www.cwla.org/>

The Child Welfare League of America, an association of more than 1,000 public and private nonprofit agencies, is committed to engaging all Americans in promoting the well-being of children, youths, and their families, and protecting every child from harm. Their website provides information of CWLA's programs and publications.

Children's Defense Fund

<http://www.childrensdefense.org/>

The mission of the Children's Defense Fund is to Leave No Child Behind/E and to ensure every child a Healthy Start, a Head Start, a Fair Start, a Safe Start, and a Moral Start in life and successful passage to adulthood with the help of caring families and communities. Their website provides information about CDF's current projects and issues as well as lists their publications.

National Adoption Information Clearinghouse

<http://www.calib.com/naic/>

National Adoption Information Clearinghouse, a service of the Children's Bureau, Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services, is a comprehensive resource on all aspects of adoption, including infant, intercountry, and special needs adoption. Their website provides information on online databases, online publications, what publications can be ordered from them and related links.

National Association of Child Advocates

<http://www.childadvocacy.org/>

The National Association of Child Advocates is a nationwide network of child advocacy organizations working at the increasingly critical level of America's state-houses, county commissions, and city councils and serves as the forum where child advocacy leaders from across the country convene to share ideas and exchange information, formulate joint efforts and coordinate strategies, sharpen their skills, and increase the impact of the child advocacy movement. Their website provides information on their publications and issues on which they are working.

National CASA Association

<http://www.casanet.org/>

The mission of the National Court Appointed Special Advocate Association is to speak for the best interests of abused and neglected children in the courts by promoting and supporting quality volunteer representation for children to provide each child a safe, permanent, nurturing home. Their website features topical articles as well as their library, forums, and training.

National Clearinghouse on Child Abuse and Neglect Information

<http://www.calib.com/nccanch/>

The Clearinghouse, a service of the Children's Bureau, Administration for Children and Families, Department of Health and Human Services, is a national resource for professionals seeking information on the prevention, identification, and treatment of child abuse and neglect and related child welfare issues. Their website provides information on publications, databases, funding sources, services, prevention resources, and related links.

National Council of Juvenile and Family Court Judges

<http://ncjfcj.unr.edu/> or <http://pppncjfcj.org>

NCJFCJ's Permanency Planning for Children's mission is to provide an environment for change by supporting and facilitating dependency court teams and by providing education and technical assistance to enable courts nationwide to meet their goals to improve practice in child abuse and neglect cases. Their website provides information on their publications and how to order them and about their projects.

National Resource Center for Family Centered Practice

<http://www.uiowa.edu/~nrcfcp/new/index.html>

The National Resource Center for Family Centered Practice provides technical assistance, staff training, research and evaluation, and information on Family-

based programs and issues to public and private human services agencies in states, counties, and communities across the United States. The Center has worked in child welfare, mental health, juvenile justice, community action, county extension, Head Start, and job training programs. This internet address is to its publications catalog.

National Resource Center for Foster Care and Permanency Planning
<http://guthrie.hunter.cuny.edu/socwork/other.htm>

The National Resource Center for Foster Care and Permanency Planning (NRCPP) provides information services, training, and technical assistance on permanency planning, kinship foster care, concurrent permanency planning, family group decision making and HIV/AIDS to ensure that children have safe, caring, and lifetime families in which to grow up. NRCPP's web site describes the type of information, training and technical assistance that the center provides.

REFERENCE LIST

ADOPTION

Joseph Crumbley, **Transracial Adoption and Foster Care: Practice Issues for Professionals**, Washington, D.C.: Child Welfare League of America, 1999.

Joan Heifetz Hollinger and the Staff of the Center's National Child Welfare Resource Center on Legal and Court Issues, **A Guide to the Multiethnic Placement Act (As Amended in 1996)**, Washington, D.C.: American Bar Association Center on Children and the Law, 1997.

National Council of Juvenile and Family Court Judges, **Judges' Guidebook on Adoption and Other Permanent Homes for Children**, *Technical Assistance Bulletin*, Volume 3, No. 1, February 1999.

CHILD DEVELOPMENT

The American Academy of Pediatrics and Stephen P. Shelov, Steven P. Shelov, Robert E. Hannemann, and Catherine D. De Angelis (eds.), **Caring for Your Baby and Young Child: Birth to Age 5**, Bantam Doubleday Dell Publishing, July 1998.

T. Berry Brazelton, **Infants and Mothers: Differences in Development**, Delacorte Press, May 1994.

Joseph Goldstein, Anna Freud, and Dorothy Burlingham, **Before the Best Interests of the Child**, Free Press, February 1986.

Joseph Goldstein, Anna Freud, Albert J. Solnit, and Dorothy Burlingham, **Beyond the Best Interests of the Child: New Edition with Epilogue**, Free Press, December 1984.

Penelope Leach, **Your Baby and Child: From Birth to Age Five**, Knopf, November 1997.

Benjamin Spock, Stephen J. Parker, Steven Parker, and Sharon Scotland, **Dr. Spock's Baby and Child Care**, Pocket Books, June 1998.

COURT IMPROVEMENT

Noy Davis and Susan Wells, eds., **Justice System Processing of Child Abuse and Neglect Cases: Final Report**, Washington, D.C.: American Bar Association Center on Children and the Law, 1996.

Shirley A. Dobbin, Sophia I. Gatowski, and Krista R. Johns, **Judicial Leadership and Judicial Practice in Child Abuse and Neglect Cases**, *Technical Assistance Bulletin*, Vol. II, No. 5, July 1998.

Judge Leonard P. Edwards, **Improving Juvenile Dependency Courts: Twenty-Three Steps**, *Juvenile and Family Court Journal*, Vol. 48, TA-168, 1997.

Mark Hardin and Ann Shalleck, **Court Rules to Achieve Permanency for Foster Children: Sample Rules and Commentary**, Washington, D.C.: American Bar Association Center on Children and the Law, 1985.

Mark Hardin, H. Ted Rubin, and Debra Ratterman Baker, **The "Courts that Work" Series: A Second Court that Works: Judicial Implementation of Permanency Planning Reforms**, Washington, D.C.: American Bar Association Center on Children and the Law, 1995. (A study of Grand Rapids, MI's juvenile court on child protection case processing.)

Mark Hardin, **How to Work with Your Court: A Guide for Child Welfare Agency Administrators**, Washington, D.C.: American Bar Association Center on Children and the Law, 1993.

Mark Hardin, **One Court that Works: Judicial Implementation of Permanency Planning Reforms**, Washington, D.C.: American Bar Association Center on Children and the Law, 1992. (A study of Cincinnati's juvenile court implementation of foster care reform.)

Publication Development Committee, **Victims of Child Abuse Project, RESOURCE GUIDELINES — Improving Court Practice in Child Abuse & Neglect Cases**, Reno, NV: National Council of Juvenile and Family Court Judges, 1995.

FAMILY PRESERVATION

Joan Barthel, **For Children's Sake, The Promise of Family Preservation**, New York, NY: Edna McConnell Clark Foundation, 1991.

Elizabeth Cole and Joy Duva, **Family Preservation: An Orientation for Administrators and Practitioners**, Washington, D.C.: Child Welfare League of America, 1990.

G. Diane Dodson and Mark Hardin, **On-Time Services to Preserve Families: A Guide for Child Protection Agency Administrators and Policymakers**, Washington, D.C.: American Bar Association Center on Children and the Law, 1997.

Mary Ann Jones, **A Second Chance for Families: 5 Years Later Follow Up of a Program to Prevent Foster Care**, Washington, D.C.: Child Welfare League of America, 1986.

Sarah Kaplan and Kris Sahonchik, **Overcoming Barriers to Permanency: An Annotated Bibliography**, Washington, D.C.: American Bar Association Center on Children and the Law, 1993.

Jacquelyn McCroskey and William Meezan, **Family Preservation and Family Functioning**, Washington, D.C.: Child Welfare League of America, 1997.

Abigail Norman, **Keeping Families Together: The Case for Family Preservation**, New York: Edna McConnell Clark Foundation, 1985.

FAMILY REUNIFICATION

Dennis J. Brazier, **Family-Focused Practice in Out-of-Home Care: A Handbook and Resource Directory**, Washington, D.C.: Child Welfare League of America, 1995.

Barbara A. Pine, Robin Warsh, and Anthony N. Maluccio, eds., **Together Again: Family Reunification in Foster Care**, Washington, D.C.: Child Welfare League of America, 1993.

Robin Warsh, Barbara A. Pine, and Anthony N. Maluccio, **Reconnecting Families: A Guide to Strengthening Family Reunification Services**, Washington, D.C.: Child Welfare League of America, 1996.

Robin Warsh, Anthony N. Maluccio, and Barbara A. Pine, **Teaching Family Reunification: A Sourcebook**, Washington, D.C.: Child Welfare League of America, 1994.

FOSTER CARE

Richard P. Barth, Mark Courtney, and Jill Duerr Berrick, **From Child Abuse to Permanency Planning: Child Welfare Services Pathways and Placements (Modern Applications of Social Work)**, New York: Aldine De Gruyter, 1994.

Katharine Cahn and Paul Johnson, eds., **Children Can't Wait: Reducing Delays in Out-of-Home Care**, Washington, D.C.: Child Welfare League of America, 1993.

Children's Bureau of Southern California, **Family Assessment Form: A Practice-Based Approach to Assessing Family Functioning**, Washington, D.C.: Child Welfare League of America, 1997.

Donald N. Duquette, Mark Hardin, and Carolyn Payne Dean, **Adoption 2002: The President's Initiative on Adoption and Foster Care, Guidelines for Public Policy and State Legislation Governing Permanence for Children**, Washington, D.C.: U.S. Department of Health and Human Services, 1999.

Judge Leonard P. Edwards, **Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980**, *Juvenile and Family Court Journal*, Vol. 45, pp. 3-28, 1994.

David Fanshel, Stephen S. Finch, John F. Grundy, **Foster Children in Life Course Perspectives: The Casey Family Program Experience**, New York, NY: Columbia University Press, 1990.

Mark Hardin, **Family Group Conferences in Child Abuse and Neglect Cases: Learning from the Experience of New Zealand**, Washington, D.C.: American Bar Association Center on Children and the Law, 1996.

Mark Hardin, ed., **Foster Children In the Courts**, Boston: Butterworth Legal Publishers, 1983.

Janet Knipe and Joy Warren, **Foster Youth Share Their Ideas for Change**, Washington, D.C.: Child Welfare League of America, 1999.

Thomas P. McDonald, ed., **Assessing the Long Term Effects of Foster Care: A Research Synthesis**, Washington, D.C.: Child Welfare League of America, 1997.

National Association of Public Child Welfare Administrators, **Guidelines for a Model System of Protective Services for Abused and Neglected Children and Their Families**, Washington, D.C.: American Public Human Services Association, 1999.

Sally E. Palmer, **Maintaining Family Ties: Inclusive Practice in Foster Care**, Washington, D.C.: Child Welfare League of America, 1995.

KINSHIP CARE

J. D. Berrick, Richard P. Barth, and B. Needell, **A Comparison of Kinship Foster Homes and Foster Family Homes: Implications for Kinship Foster Care as Family Preservation**, *Children and Youth Services Review*, Vol. 16, No. 1-2, pp. 33-61, 1994.

Black Task Force on Child Abuse and Neglect, **Position Paper on Kinship Foster Care**, New York City: Author, 1992.

CWLA North American Kinship Care Policy and Practice Committee, **Kinship Care: A Natural Bridge**, Washington, D.C.: Child Welfare League of America, 1994.

Joseph Crumbley and Robert L. Little, eds., **Relatives Raising Children: An Overview of Kinship Care**, Washington, D.C.: Child Welfare League of America, 1997.

June Melvin Mickens and Debra Ratterman Baker, **Making Good Decisions About Kinship Care**, Washington, D.C.: American Bar Association Center on Children and the Law, 1997.

Dana Durdnell Wilson and Sandra Stukes Chipungu, **Kinship Care, A Special Issue of CWLA's Child Welfare Journal**, 1996.

LEGAL REPRESENTATION

ABA Family Law Section, **ABA Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases**, Washington, D.C.: American Bar Association Center on Children and the Law, 1996.

Debra Ratterman Baker, Janet Chiancone, Noy S. Davis, Jane Feller, Sally Small Inada, Yolande Samerson, and Claire Sandt, **What I Wish I'd Learned in Law School: Social Science Research for Children's Attorneys**, Washington, D.C.: American Bar Association, Center on Children and the Law, 1997.

Kathi L. Grasso, ed., **A Judge's Guide to Improving Legal Representation of Children**, Washington, D.C.: American Bar Association Center on Children and the Law, 1998.

Shirley A. Dobbin, Sophia I. Gatowski, and Krista R. Johns, **Child Abuse and Neglect Cases: Representation as a Critical Component of Effective Practice**, *Technical Assistance Bulletin*, Reno, NV: National Council of Juvenile and Family Court Judges, 1998.

Karen Aileen Howze, **Making Differences Work: Cultural Context in Abuse and Neglect Practice for Judges and Attorneys**, Washington, D.C.: American Bar Association Center on Children and the Law, 1996.

Mimi Laver, **Advice for Agency Attorneys Implementing ASFA: A Challenge for Agency Attorneys**, ABA Child Law Practice, Vol. 17, No. 8, pp. 113, 118-123, October 1998.

REASONABLE EFFORTS

American Bar Association, **Reasonable Efforts: A Manual for Judges**, Washington, D.C.: Author, 1989.

ABA's National Resource Center for Legal and Court Issues, **Reasonable Efforts: A Report on Implementation by Social Service Agencies in Five States**, Washington, D.C.: American Bar Association, 1989.

ABA's National Resource Center for Legal and Court Issues and the National Child Welfare Resource Center for Organizational Improvement, **Reasonable Efforts Advisory Meeting Report**, Washington, D.C.: American Bar Association Center on Children and the Law, 1995.

Jessica A. Graf, **Can Courts and Welfare Agencies Save the Family? An Examination of Permanency Planning, Family Preservation, and the Reasonable Efforts Requirement**, *Suffolk U. L. Rev.*, Vol. 30, p. 81, 1999.

Mark Hardin, Debra Ratterman, and Diane Dodson, **Reasonable Efforts to Prevent Foster Placement: A Guide to Implementation**, Washington, D.C.: American Bar Association, 1989.

Robert J. Hunner, Charlotte Booth, Charlotte Goodluck, Mary Ault, Betsey Redbear, Yvonne Chase, Benjamin Eide, Jill Jasper, Myra Munson, and Carol Overbeck, **Active & Reasonable Efforts to Preserve Families: A Guide for Delivering Services in Compliance with the Indian Child Welfare Act of 1978 (PL 95-608 & the Adoption Assistance & Child Welfare Act of 1980 (PL 92-272))**, Seattle, WA: Northwest Resource Associates, 1994.

Cristine H. Kim, **Putting Reason Back into the Reasonable Efforts Requirement in Child Abuse and Neglect Cases**, *U. Ill. L. Rev.* p. 287, 1999.

National Resource Center for Family Centered Practice, **Repare: Reasonable Efforts to Permanency Planning Through Adoption and Reunification Endeavors**, Executive Summary (1996) Final Report (1996). Iowa: Author. National Council of Juvenile and Family Court Judges, **Reasonable Efforts Training Video Notebook**. (Available on three week loan or purchase from NCJFCJ).

National Council of Juvenile and Family Court Judges Permanency Planning for Children Project, **Protocol for Making Reasonable Efforts to Preserve Families in Drug-Related Dependency Cases**, Reno, NV: National Council of Juvenile and Family Court Judges, January 1992.

Alice C. Shotton, *Model Questions for Defining Reasonable Efforts*, San Francisco: Youth Law Center, 1990.

Patricia Tate Stewart, *Keeping Families Together/Reasonable Efforts*, *SUM Del. Law*. Vol. 12, p. 9, 1994.

STANDARDS

Child Welfare League of America, *Standards for Services to Strengthen and Preserve Families with Children*, Washington, D.C.: 1989.

Child Welfare League of America, *Standards of Excellence for Family Foster Care*, Washington, D.C.: Author, 1995.

Child Welfare League of America, *Standards of Excellence for Services for Abused or Neglected Children and their Families*, Washington, D.C.: Author, 1998.

STATISTICS

Michael R. Petit, Patrick A. Curtis, Kristen Woodruff, Lynda Arnold, Laura Feagans, and Jennifer Ang, *Child Abuse and Neglect: A Look at the States*, 1999 CWLA Stat Book, Washington, D.C.: Child Welfare League of America, 1999.

TERMINATION OF PARENTAL RIGHTS

Mark Hardin and Robert Lancour, *Early Termination of Parental Rights: Developing Appropriate Statutory Grounds*, Washington, D.C.: American Bar Association Center on Children and the Law, 1998.

THERAPEUTIC FOSTER CARE

Robert P. Hawkins and James Breiling, eds., *Therapeutic Foster Care: Critical Issues*, Washington, D.C.: Child Welfare League of America, 1989.

Pamela Meadowcroft and Barbara A. Trout, *Troubled Youth in Treatment Homes: A Handbook of Therapeutic Foster Care*, Washington, D.C.: Child Welfare League of America, 1990.

VISITATION

Peg McCartt Hess and Kathleen Ohman Proch, *Family Visiting in Out-of-Home Care: A Guide to Practice*, Washington, D.C.: Child Welfare League of America, 1988.

For additional copies of this booklet, please contact the Program for
Children at The Edna McConnell Clark Foundation (212) 551-9100.

For questions about the protocol, write or call:

The Youth Law Center
417 Montgomery Street
Suite 900
San Francisco, CA 94104
(415) 543-3379